

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE**

**ROBERT HAGOPIAN,**  
16 Hagopian Ct.  
Madison, ME 04950

**DUANE R. LANDER,**  
P.O. Box 1113  
Greenville, ME 04441

**STERLING B. ROBINSON, and**  
1330 Atlantic Highway  
Warren, ME 04864

**JAMES T. TRUDEL,**  
616 Fuller Rd.  
Hermon, ME 04401

**Plaintiffs,**

v.

Case No. \_\_\_\_\_

**MATTHEW DUNLAP, in his official capacity as**  
Secretary of State of Maine,  
148 State House Station  
Augusta, Maine 04333-0148

**AARON FREY, in his official capacity as**  
Attorney General of Maine,  
6 State House Station  
Augusta, ME 04333

**JANET MILLS, in her official capacity as**  
Governor of Maine,  
#1 State House Station  
Augusta, ME 04333

**Defendants.**

**DECLARATORY AND  
INJUNCTIVE RELIEF  
SOUGHT**

**COMPLAINT**

Plaintiffs Robert Hagopian, Duane R. Lander, Sterling B. Robinson, and James T. Trudel,  
by and through undersigned counsel, file this Complaint against Matthew Dunlap, the Secretary

of State of Maine, Aaron Frey, the Attorney General of Maine, and Janet Mills, Governor of Maine, in their official capacities, seeking **declaratory and injunctive relief** on an expedited basis in order to protect their rights to participate fully in the 2020 general election.

### INTRODUCTION

1. This case seeks to vindicate the constitutional rights of Mainers who will soon be denied full participation in the 2020 general election.

2. In 2017, Maine became the first—and only—state in our nation’s 233-year-long constitutional tradition to adopt an electoral system known as “ranked-choice voting.”

3. The Maine Act to Establish Ranked-Choice Voting (“RCV Act”) burdens the voting rights of all Mainers. In 2018, it subjected nearly two-thirds of those voters who showed up at the polls on Election Day to a serious risk of disenfranchisement. And it, in fact, disenfranchised a substantial number of voters. The same will happen to Maine voters in the 2020 election if this Court does not intervene.

4. The RCV Act permits voters to rank multiple candidates on their ballots in order of choice. But this opportunity comes at a very high cost. **Under the RCV Act, ballots are tabulated in “rounds.” Me. Rev. Stat. tit. 21-A, § 723-A(2). And the RCV Act requires each voter to “rank” enough candidates on his or her ballot to ensure that it “continu[es]” to be counted in the determinative “final round.” Id. §§ 723-A(1)(B), (D), 723-A(2), 723-A(3). A voter who fails to mark enough candidates is at risk of having his or her ballot “exhausted” and his or her vote “not counted” in the election round that “determine[s] the winner.” Id. § 723-A(2).**

5. Maine conducted its first general election under the RCV Act in 2018. The results for Maine voters were abysmal. **Although Mainers share a proud democratic tradition that boasts an average rate of full voter participation that is above 97%—meaning that, among Mainers who choose to**

Pls' description of RCV

stat re: "full voter participation"

vote, nearly all of them complete their ballot in a manner that guarantees that it will be counted in the final tally—under ranked-choice voting, the rate of full voter participation plunged to just 37.7% in the 2018 Maine Congressional Election. The primary elections were similar: more than half of all voters failed to completely fill out their ballots. Put differently, the majority of Mainers who participated in these elections were at risk of having their votes discarded even though they showed up at the polls and cast legal ballots on Election Day.

6. The risk became reality for tens of thousands of Mainers. Maine exhausted more than 40,000 of the ballots that voters cast in its 2018 ranked-choice elections. These exhausted ballots were “not counted” in the election round that “determine[d] the winner.” Me. Rev. Stat. tit. 21-A, § 723-A(2). Rather, those votes were ignored so that Maine could purportedly declare a “majority” winner.

7. And that is only part of the story. An analysis of town level data from the 2018 general election shows a strong empirical relationship between the number of Maine voters failing to achieve full participation and the number of voters in that town who were over 65 or lacked a college degree. In other words, the burden on voting rights is falling most heavily on older voters and those with the lower levels of educational attainment.

8. The sharp decline in full voter participation in Maine’s 2018 elections cannot be dismissed as anomalous. The academic literature confirms that low rates of full participation and high rates of ballot exhaustion are a common and persistent feature of ranked-choice elections across jurisdictions.

9. These problems will not go away. Empirical studies find no correlation between the length of time a jurisdiction has employed ranked-choice voting and ballot exhaustion rates. In other words, the failure of nearly 300,000 Maine voters to fully complete their ballot in Maine’s 2018

40,000  
exhausted  
ballots

lack of full  
participation  
among 65+  
and non  
college  
educated

ballot  
exhaustion  
is common?  
and  
allegedly  
doesn't go  
away with  
time

ranked-choice elections cannot be attributed to the novelty of the system.

10. If anything, the problem is likely to worsen this election. The ongoing COVID-19 pandemic all but guarantees that a much larger portion of voters will submit absentee ballots in 2018. Without the ability to obtain in-person voting assistance, it is likely that even more Mainers will inadvertently miscast their ranked-choice ballots.

11. The low rate of full participation under the RCV Act also cannot be explained by voter choice. Ballot data from Maine's 2018 ranked-choice elections—as well as Plaintiffs' own experiences—show voting patterns that are inconsistent with choice and that many voters are confused regarding how to effectuate their vote. Indeed, that the RCV Act disproportionately affects the full participation of older and less-educated voters demonstrates a very serious problem with the system that will continue in the 2020 general election and beyond if this Court does not intervene.

12. In addition, if voters were choosing not to fully participate, one would expect the drop off between rounds in ranked-choice elections to be similar to the drop off between rounds in traditional runoff elections. But it is twice as high. And that is so even though full participation in a majority runoff system requires voters to cast one ballot in the initial election, and then to show up at the polls a second time and cast another ballot in the runoff election. Although this system requires two trips to the polls rather than just one, jurisdictions that use majority runoff elections see average rates of full voter participation (*i.e.*, percentages of voters who show up at the first and second election) from 56% to 91%—much higher than under RCV.

13. It is unreasonable for the State to impose a voting system that it concedes is more complex than plurality and runoff voting, then dismiss as “voter choice” empirical evidence that voters as a whole, and older and less educated voters in particular, struggle to achieve full participation

RCV vs run-  
off election

under that system.

14. In addition, even many voters who understand the RCV Act and how to fully participate in the RCV system are put in an untenable position. That is, many voters—including Plaintiff Robert Hagopian—wish to ensure that their ballots are counted, but do not wish to be forced to vote for other candidates. The only choice these voters have is a Hobson’s Choice—they can either risk ballot exhaustion or cast votes for candidates they find objectionable.

15. The problems with the RCV Act are manifest in this case.

16. Plaintiffs will be injured by the RCV Act in the general election for Maine’s United States Senator set for November 3, 2020 (the “2020 Senatorial Election”).

17. The identities of the candidates who will advance to the general election for the 2020 Senatorial Election were determined by the primaries held on July 14, 2020. Those candidates are Susan Collins (R), Sara Gideon (D), Max Linn (I), and Lisa Savage (I). Because this is a four-candidate election, “[r]anked-choice voting will be used.” Sec’y State, *Upcoming Elections*, Maine.gov, <https://www.maine.gov/sos/cec/elec/upcoming/index.html> (last visited July 16, 2020).

18. Specifically, Plaintiffs are Mainers who intend to vote in the 2020 Senatorial Election and want to guarantee that their ballots are counted regardless of what unfolds.

19. Plaintiffs are concerned that the complicated RCV ballot may cause them to spoil their ballots or to otherwise effectuate results they do not intend.

20. The threat of ballot exhaustion compels some Plaintiffs to rank more candidates than they otherwise would. This burdens Plaintiffs by forcing them to form and express nuanced opinions about the relative merits of candidates for whom they would not otherwise vote.

21. In addition, the threat of ballot exhaustion burdens some Plaintiffs by forcing them to rank candidates they find objectionable in order to ensure that their ballots are counted in the final result.

voting for one candidate or voting for multiple to avoid exhaustion creates harm

how is this a burden? voters should do this about candidates in every election, no matter the type

The RCV Act puts these voters to a Hobson's Choice: express support for and associate with candidates they disapprove of, or risk losing the fundamental right to have their votes counted.

22. The State will not provide Plaintiffs with notice or an opportunity to cure if the State decides to exhaust their ballots.

23. To achieve its so-called "majority" standard, the RCV Act must disenfranchise enough voters to permit one candidate to be deemed the "winner" among the remaining voters.

### PARTIES

24. Plaintiff Robert Hagopian is a resident of and registered as a Republican to vote in Somerset County, Maine. Ex. B (Declaration of Robert Hagopian ("Hagopian Declaration")), ¶¶ 4, 7.

25. Mr. Hagopian is 73 years old and of sound mind. *Id.* ¶ 2.

26. Mr. Hagopian is a citizen of the United States and of the State of Maine. *Id.* ¶ 3.

27. Mr. Hagopian resides at 16 Hagopian Ct., Madison, ME 04950. *Id.* ¶ 4.

28. Mr. Hagopian is a former eighth grade science teacher and currently runs his own business, an indoor firing range. *Id.* ¶ 5.

29. Mr. Hagopian received an undergraduate degree from William Penn University in 1969. *Id.* ¶ 6.

30. Mr. Hagopian received a Master's in education from the University of Southern Maine in the early 1980s. *Id.*

31. Plaintiff Duane R. Lander is a resident of and registered as a Republican to vote in Piscataquis County, Maine. Ex. C (Declaration of Duane R. Lander ("Lander Declaration")), ¶¶ 4, 6, 7.

32. Mr. Lander is 79 years old and of sound mind. *Id.* ¶ 2.

33. Mr. Lander is a citizen of the United States and of the State of Maine. *Id.* ¶ 3.

34. Mr. Lander resides at 12 Rail Lane, Harford's Point Twp., Maine, 04441, and his mailing address is P.O. Box 1113, Greenville, ME 04441 in Piscataquis County. *Id.* ¶ 4.

35. Mr. Lander is a United States Army veteran and retired engineer. *Id.* ¶ 5.

36. Mr. Lander attended classes at the University of Maine and graduated from the Wentworth Institute of Technology in Massachusetts in 1963. *Id.* He graduated from the Army School of Engineers in 1964 and from Bryant and Stratton Business School in Massachusetts in 1968. *Id.*

37. Mr. Lander actively participates in Republican Party politics in his county. He has served as the Chairman for the Piscataquis County Republican Committee on several occasions. He served as a member of the Maine House of Representatives from 1984–1986. He was also a delegate on behalf of the State of Maine to the Republican National Conventions in 1992 and 1996. *Id.* ¶ 7.

38. Plaintiff Sterling B. Robinson is a resident of and registered as a Republican to vote in Knox County, Maine. Ex. D (Declaration of Sterling B. Robinson ("Robinson Declaration")), ¶¶ 4, 8.

39. Mr. Robinson is 72 years old and of sound mind. *Id.* ¶ 2.

40. Mr. Robinson is a citizen of the United States and of the State of Maine. *Id.* ¶ 3.

41. Mr. Robinson resides at 1330 Atlantic Highway, Warren, ME 04864 in Knox County. *Id.* ¶ 4.

42. Mr. Robinson is an eighth generation Maine resident and currently resides in a home built by his family, which is one of the only remaining original homes that was built on the Waldo Patent land grant. *Id.* ¶ 5.

43. Mr. Robinson is retired but was previously employed in a number of different positions,

including as a tractor trailer driver and an office manager and personal assistant to a listed artist. *Id.* ¶ 6.

44. Mr. Robinson attended several years of post-secondary education at the University of Maine in 1967 to 1968. *Id.* ¶ 7.

45. Mr. Robinson participated in the Continuing Education Division and did not receive an undergraduate degree. *Id.*

46. Plaintiff James T. Trudel is a resident of and registered as an Independent to vote in Penobscot County, Maine. Exhibit E (Declaration of James T. Trudel (“Trudel Declaration”)), ¶¶ 4, 7.

47. Mr. Trudel is 73 years old and of sound mind. *Id.* ¶ 2.

48. Mr. Trudel is a citizen of the United States and of the State of Maine. *Id.* ¶ 3.

49. Mr. Trudel resides at 616 Fuller Rd, Hermon, ME 04401 in Penobscot County. *Id.* ¶ 4.

50. Mr. Trudel is a retired Lieutenant Colonel of the Maine National Guard and former electrical engineer. *Id.* ¶ 5.

51. Mr. Trudel received a Bachelor of Science in Electrical Engineering from University of Maine in Orono in 1984. *Id.* ¶ 6.

52. Matthew Dunlap (“the Secretary”) is the Secretary of State of Maine and is sued in his official capacity.

53. The Secretary is responsible for preparing ranked-choice ballots in accordance with state law and furnishing those ballots to municipalities. Me. Rev. Stat. tit. 21-A, §§ 601, 606.

54. The Secretary tabulates the results of ranked-choice ballots. *Id.* § 722.

55. The Secretary is charged with instructing political subdivisions and voters on the procedures for carrying out ranked-choice voting. *Id.* § 605-A.



56. The Secretary may delegate ministerial duties to others under his supervision. *Id.* § 2.

57. Defendant Aaron Frey (“the Attorney General”) is the Attorney General of Maine and is sued in his official capacity.

58. The Attorney General is charged with enforcing Maine’s election laws. *Id.* § 33.

59. Defendant Janet Mills (“the Governor”) is the Governor of Maine and is sued in her official capacity.

60. The Governor is responsible for certifying the results of elections in Maine. *Id.* § 724.

### **JURISDICTION AND VENUE**

61. This Court has subject matter jurisdiction over this action because it arises under the laws and Constitution of the United States. 28 U.S.C. § 1331. Specifically, this action is brought pursuant to 42 U.S.C. §§ 1983 and 1988 to enforce the First, Fourteenth, and Twenty-Sixth Amendments to the U.S. Constitution.

62. Venue is proper in this District because all Defendants reside in Maine and because a substantial part of the events giving rise to Plaintiffs’ claims occurred within this judicial District. *See* 28 U.S.C. §§ 1391(e)(1)(A), (B).

63. Venue is proper in this Division because a substantial part of the events giving rise to the claims herein occurred within Kennebec, Piscataquis, and Somerset Counties. D. Me. Local R. 3(b). Plaintiff Robert Hagopian is a registered voter residing in Somerset County. Hagopian Declaration ¶¶ 4, 7. Plaintiff Duane R. Lander is a registered voter residing in Piscataquis County. Lander Declaration ¶¶ 4, 6. Plaintiff James T. Trudel a registered voter residing in Penobscot County. Trudel Declaration ¶¶ 4, 7. Ranked-choice ballots are tabulated in Kennebec County.

64. Plaintiffs each have Article III standing because they intend to vote in the 2020 Senatorial Election, and that election will be subject to ranked-choice voting. *See* Sec’y State, *Upcoming*

*Elections*, Maine.gov, <https://www.maine.gov/sos/cec/elec/upcoming/index.html> (last visited July 16, 2020) (“Ranked-choice voting will be used in the 2020 State Primary and General elections.”).

65. Plaintiff Robert Hagopian will be injured by the RCV Act because the threat of ballot exhaustion compels him to rank candidates he finds objectionable in order to ensure that his ballot is counted, or to give up his fundamental right to vote. Hagopian Declaration ¶¶ 8–20.

66. Plaintiff Duane R. Lander will be injured by the RCV Act because he plans to rank only Susan Collins in the 2020 Senatorial Election, and the Secretary may exhaust his vote before the final round. Lander Declaration ¶¶ 15–16. He also does not understand how to ensure his vote is counted, despite his own research and being an active political participant. *Id.* ¶¶ 12–13. The confusing nature of the RCV ballot presents Lander with choices that may cause him to effectuate a result he does not intend, thus undermining his voting interests and/or causing his ballot to be exhausted. *Id.* ¶¶ 12–17. Further, the State will not provide Lander with notice or an opportunity to challenge an exhaustion decision.

67. Plaintiff Sterling B. Robinson will be injured by the RCV Act because the threat of ballot exhaustion compels him to develop plans to rank each candidate and form nuanced opinions about the relative merits of candidates for whom he would not otherwise vote. Robinson Declaration ¶¶ 16–18. Robinson is further injured because the confusing nature of the RCV ballot presents him with choices that may cause him to effectuate a result he does not intend, thus undermining his voting interests and/or causing his ballot to be exhausted. *Id.* ¶¶ 18–19. Further, the State will not provide Robinson with notice or an opportunity to challenge an exhaustion decision.

68. Plaintiff James T. Trudel will be injured by the RCV Act because the threat of ballot exhaustion compels him to rank candidates he finds objectionable in order to ensure that his ballot is counted, or to give up his fundamental right to vote. Trudel Declaration ¶¶ 8–20.

69. Plaintiffs' injuries are caused by the RCV Act and are redressable by this Court.

### **THE MAINE RCV ACT**

70. Maine enacted the Act to Establish Ranked-Choice Voting in 2017. *See* I.B. 2015, ch. 3; *see also* L.D. 1557, §§ 1–6 (referred to the voters, 127th Legis. 2016) (effective Jan. 7, 2017).

71. The RCV Act establishes a system wherein voters must “rank” enough candidates to ensure that their ballot continues to and is counted in the final, determinative round. *See* Me. Rev. Stat. tit. 21-A, § 723-A(2).

72. Under the Secretary's rules, each voter “rank[s] as many candidates as they wish . . . in order of choice.” 29-250-535 Me. Code R. § 3(2); *see also* Me. Rev. Stat. tit. 21-A, §§ 601(2)(B), (D), (J), 723-A(4)(A) (“The number of allowable rankings may be limited to no fewer than 5.”).

73. If a candidate receives a majority of votes in the first round, she is declared the winner. *See* 29-250-535 Me. Code R. § 4(2)(A) (applying ranked-choice voting rules “[i]f no candidate receives more than 50% of the first choice votes”); *see also* Me. Rev. Stat. tit. 21-A, § 723-A(2)(A).

74. If no candidate receives a majority of the votes, then “the last-place candidate is defeated,” and the vote moves to a new “round.” Me. Rev. Stat. tit. 21-A, § 723-A(2)(B); *see also* 29-250-535 Me. Code R. § 4(2)(A).

75. More than one candidate may be eliminated per round if it is “mathematically impossible [for them] to be elected.” Me. Rev. Stat. tit. 21-A, §§ 723-A(1)(A), (4)(B); *see also* 29-250-535 Me. Code R. §§ 4(2)(A), (B)(7).

76. The process is repeated in each subsequent round with the remaining “continuing candidates.” *See* Me. Rev. Stat. tit. 21-A, § 723-A(2); *see also* 29-250-535 Me. Code R. §§ 4(2)(A), (B)(7).

77. Election officials “exhaust” and do “not count[]” ballots on which a voter did not rank a

ballot exhaustion

continuing candidate. *See* Me. Rev. Stat. tit. 21-A, §§ 723-A(1)(D), (2).

78. Anyone who fails to mark enough candidates is at risk of having his ballot “exhausted” and his vote “not counted” in the election round that “determine[s] the winner.” Me. Rev. Stat. tit. 21-A, § 723-A(2).

79. There is no pre- or post-deprivation procedure by which a voter is informed that his or her ballot has been exhausted and given an opportunity to cure his ballot, nor is there any procedure by which he or she may challenge an exhaustion decision.

80. The winner is the candidate that wins a majority of votes in a round or receives the most votes “[i]n the final round, when only 2 continuing candidates remain[.]” 29-250-535 Me. Code R. § 4(2)(A); *see also* Me. Rev. Stat. tit. 21-A, §§ 723-A(2).

81. Maine adopted ranked-choice voting with the promise that it would, *inter alia*, “ensure[] that candidates with the most votes and broadest support win” and ensure that voters’ “voice[s] matter[] more[.]” *Frequently Asked Questions*, The Committee for Ranked Choice Voting, <http://www.rcvmaine.com/faq> (last visited July 13, 2020).

82. As explained below, these promises have turned out to be illusory.

**THE RCV ACT HAS PREVENTED THE MAJORITY OF MAINE VOTERS FROM FULLY PARTICIPATING AND HAS DISENFRANCHISED MANY VOTERS**

83. There are two key metrics on which to measure the voter burden caused by the RCV Act: (i) the number of voters that fully participated, and (ii) the number of exhausted ballots.

84. Ranked-choice voting in Maine has led to an abysmally low rate of full voter participation and an equally abysmal high rate of ballot exhaustion—neither of which can be explained by voter choice.

*The RCV Act Has Prevented Many Maine Voters From Fully Participating In Federal Elections and Primary Elections*

85. Hundreds of thousands of ballots did not reflect full voter participation in Maine’s 2018

ranked-choice elections.

86. To participate fully in an election, voters must complete their ballot in such a manner that they are not at risk of having their ballot exhausted before the final tally. Ex. A (Expert Report of Nolan McCarty, Ph.D., Professor of Politics and Public Affairs at Princeton University (“McCarty Report”)), at 10.

87. Conversely, voters that fail to fully participate run the risk that their ballot will not be counted in determining the winner of a ranked-choice election in the final round of voting. *See id.*

88. There is no strategic reason for a voter to not fully participate in a ranked-choice election. *Id.* at 11.

89. In a ranked-choice election, a fully participating voter is a voter who ranks at least  $n-1$  distinct candidates in an  $n$ -candidate election and does not overvote at any of the ranks. *Id.* at 10.

90. Ballots that fail to reflect full participation are referred to as “truncated ballots.” *Id.*

91. The full participation rate is an important metric because the number of exhausted ballots tends to underestimate the full burden on voters for four reasons.

92. **First**, voters that do not fully participate run the risk of not having their vote counted in the outcome-determinative round of voting. Even if a truncated ballot happens to rank one of the final two continuing candidates, such an outcome masks the very real risk of disenfranchisement incurred by the voter. *Id.*

93. **Second**, a voter’s ballot may not be exhausted even though the voter filled his or her ballot out in a way that is both irrational and inconsistent with an intentional protest vote—such as ranking a non-first-choice candidate in the second and fourth rounds of voting and a different, non-first-choice candidate in the third round. *Id.* at 11–12. These kinds of votes may not be discarded, but they demonstrate that voters failed to meaningfully understand and engage with the system.

four reasons why full participation rate is more important: 1. votes can hide risk of disenfr. 2. irrational votes 3. ranking reqs more work 4. exhaustion wouldn't show votes for winning candidates

risk of disenfranchisement, without evidence of it likely occurring, is not a burden

voters fill out ballots incorrectly all the time, it's not a burden.

then why did you cite the exhaustion rate... also, voters do the same thing in all down ballot races, it isn't unique to RCV

*Id.*

94. **Third**, the full participation rate better reflects voters who were burdened because they were required to make granular decisions concerning each and every candidate who appeared on the ballot—significantly more work than is required in a traditional plurality or runoff election. The data strongly supports the existence of this burden, as the ballot exhaustion rate increases by approximately 1.3% for every additional candidate in a ranked-choice election, suggesting that voters struggle to form complex preferences about larger slates of candidates. *Id.* at 9. Looking at only exhausted ballots does not fully capture the extent to which voters fail to complete their ballots because of this burden.

95. **Fourth**, merely analyzing exhausted ballots fails to capture the burden on voters who placed their franchise at risk because they refused to speak in favor of and associate with candidates of which they disapprove. For example, Plaintiff Duane R. Lander plans to vote for only Susan Collins in the 2020 Senatorial Election because, *inter alia*, he does not wish to support other candidates who violate his political convictions. Lander Declaration ¶¶ 14–17. While his vote may not be exhausted—if Susan Collins remains a “continuing candidate” through to the final round—his lack of full participation will show that he incurred a very real burden: having to choose between (i) association with candidates he would rather not support in hypothetical matchups that may never occur, and (ii) the risk of not having his vote counted. *Id.*; see also Hagopian Declaration ¶¶ 9–20; Trudel Declaration ¶¶ 9–20.

again, voters do this in non-RCV elections, this is neither unique nor burdensome

96. Looking at the rate of full participation thus better shows the true extent of the RCV Act’s burden on Mainers’ fundamental right to vote.

97. In 2018, Maine held three elections using ranked-choice voting where a winner was not determined in the first round: (i) the 2018 general election for Maine’s Second Congressional

District (the “2018 Congressional Election”), (ii) the 2018 Democratic primary for Maine’s Second Congressional District (the “2018 Congressional Primary”), and (iii) the 2018 Democratic primary for Maine’s Governor (the “2018 Gubernatorial Primary”). *See Tabulations for Elections held in 2018*, Maine.gov, <https://www.maine.gov/sos/cec/elec/results/results18.html#Nov6> (last visited July 10, 2020).

98. In the 2018 Congressional Election, only 38% of voters cast a fully participating ballot. McCarty Report at 15–16. Nearly two thirds—184,276 voters—failed to successfully complete their ballot. *Id.* at 12–13.

99. In the 2018 Gubernatorial Primary, only 35% of voters cast a fully participating ballot. McCarty Report at 15–16. More than two thirds—86,166 voters—failed to successfully complete their ballot. *Id.* at 12–13.

100. In the 2018 Congressional Primary, only 47% of voters cast a fully participating ballot. McCarty Report at 15–16. More than half—26,715 voters—failed to successfully complete their ballot. *Id.* at 12–13.

101. In other words, most Maine voters that show up to vote at ranked-choice elections fail to fully complete their ballot.

102. This burden on full participation is disproportionately borne by older voters and less educated voters.

103. Analysis of town-level voting data in Maine shows a substantial empirical relationship between the proportion of truncated or exhausted ballots and the percentage of voters on the voter rolls older than 65. *Id.* at 16–21.

104. As a concrete example, “the town with the most senior voters truncates ballots at an almost 9 percentage greater rate than the town with the least senior voters.” *Id.* at 19.

RCV in three 2018 elections; voter full participation rate was below 50%, but did this in any way affect the outcome of the elections?

does 26th amend juris have a disparate impact test? or just intent?

105. These disparate results show that the statute has the effect of furthering discrimination on account of age.

106. Analysis of town-level voting data in Maine also shows a substantial empirical relationship between the proportion of truncated or exhausted ballots and the percentage of voters without a college degree. *Id.* at 16–21.

107. These numbers show that “the least-educated town truncates ballots at a 14 percentage point greater rate than the most-educated town.” *Id.* at 19.

108. These disparate results show that the statute has the effect of furthering discrimination on account of educational attainment. so either (a) this is under rational basis and there is one here or (b) strict scrutiny and there is a compelling interest in fair elections and remaining in line with the will of the voters

109. In sum, the RCV Act results in a *significant majority* of Maine voters failing to fully participate in federal and primary elections—a statistic that is driven by elderly voters and voters without a college degree.

*The RCV Act Has Disenfranchised Many Maine Voters*

110. The Maine RCV Act has disenfranchised *tens of thousands* of voters.

111. The 2018 Congressional Election was decided on the second round of voting and featured 14,706 uncounted ballots—more than 10% of all ballots cast. *Id.* at 12–13. More than 8,000 of these ballots were exhausted after the first round of voting—meaning that voters marked a valid choice in the first round but no others. *Id.*

112. In the 2018 Congressional Election, Bruce Poliquin (R) won a plurality of votes in the first round and led his second-place opponent, Jared F. Golden (D), by more than 2,000 votes at the completion of tabulation for that round. *See Tabulations for Elections held in 2018*, Maine.gov, <https://www.maine.gov/sos/cec/elec/results/results18.html#Nov6> (last visited July 10, 2020) (hyperlink to “Representative to Congress - District 2 - Results Certified to the Governor



11/26/18”).

113. In the second round, the Secretary “transferred” more than 10,000 votes to Golden. These ballots were originally cast for the third or fourth place finishers but had ranked Golden for a later round. *Id.*

114. The Secretary exhausted approximately 8,000 additional ballots that were originally cast for the third or fourth place finishers but had not validly ranked Golden or Poliquin for the subsequent rounds. *Id.*; see also McCarty Report at 12–13.

115. In the second round, Golden was awarded 142,440 votes (50.62%), compared to Poliquin’s 138,931 votes (49.38%). That 3,509-vote margin was magnitudes smaller than the 14,706 votes that were not counted and thus removed from the denominator in calculating the second-round “majority.”

116. The 2018 Congressional Primary was also decided on the second round of voting. That race featured 7,381 uncounted ballots—nearly 15% of all ballots cast. McCarty Report at 12–13. Nearly 2,000 of these ballots were exhausted after the first round of voting. *Id.*

117. The 2018 Gubernatorial Primary was decided on the fourth round of voting. That race featured 15,000 uncounted ballots—more than 10% of all ballots cast. *Id.* More than 8,000 of these ballots were exhausted after the first round of voting. *Id.*

118. In sum, Maine has cumulatively “not counted” **more than 40,000 ballots** in ranked-choice rounds that have “determine[d] the winner” of federal and primary elections. Me. Rev. Stat. tit. 21-A, § 723-A(2).

*Maine’s Results Are Consistent With The Experience Of Ranked-Choice Voting In Other Jurisdictions And Are Unlikely To Improve Over Time*

119. Maine’s abysmal rates of full voter participation and ballot exhaustion are typical for ranked-choice voting systems.

second  
round  
decided

I presume  
that these  
didn't affect  
the outcome  
in either of  
these or you  
would've said  
so

40,000 out of  
how many  
total?

120. Failure to achieve full participation is “very common” in ranked-choice elections. McCarty Report at 10.

121. Truncated ballots in ranked-choice elections often have the potential to alter election outcomes and make it less likely that the candidate preferred by most voters ultimately wins the election. *Id.*

122. In addition, “high numbers of exhausted ballots are a pervasive phenomenon in RCV elections.” *Id.* at 5.

123. In 98 ranked-choice elections in the United States that occurred between 2006 and 2019, on average, “10.8% of votes cast in an RCV election are considered exhausted,” and “a large number of elections had ballot exhaustion rates of 20% and higher.” *Id.* at 6.<sup>1</sup> By contrast, in Maine’s plurality elections, the average proportion of ballots not counted is below 3%. *Id.* at 13.<sup>2</sup>

124. In RCV elections generally, the rate of ballot exhaustion increases with the number of candidates. *Id.* at 6–9.

125. The evidence demonstrates that these problems are “persistent, as rates of exhaustion do not decline over time.” *Id.* at 2, 7–9.

126. Accordingly, the negative impacts on voter participation and exhausted ballots in Maine cannot be chalked up to a learning curve.

127. These empirical findings support the obvious: ranked-choice voting presents a serious challenge to voters effectively expressing themselves at the ballot box.

<sup>1</sup> “Exhaustion,” for purposes of these calculations, does not include the number of ballots that are eliminated in the first round of voting—for example, ballots that were left completely blank. McCarty Report at 5, 6 n.8. Accordingly, this figure *underestimates* the number of votes that are not counted in ranked-choice elections.

<sup>2</sup> This figure comes from the 97.3% full participation rate in plurality elections. McCarty Report at 13.

wouldn't a more proper  
measure include those that  
aren't counted and  
provisional ballots?

**MAINE’S ABYSMAL FULL PARTICIPATION AND BALLOT EXHAUSTION  
FIGURES CANNOT BE EXPLAINED BY VOTER CHOICE**

128. Maine’s high numbers of voters who failed to fully participate and exhausted ballots are not the result of voters who knowingly chose to put themselves at risk of disenfranchisement. McCarty Report at 21–22. except for those who voted for the RCV Act

129. *First*, the rate of full participation is significantly lower in ranked-choice voting elections than in traditional plurality and runoff elections. McCarty Report at 13–16.

130. If the rate of full participation in ranked-choice voting was merely a function of voter choice, one would expect that a similar number of voters would fail to complete their ballots in plurality and traditional runoff elections. But the data reveal that this is plainly not what is happening.

131. “Nearly every state” employs a plurality vote system. *See Alternative Voting Systems*, National Conference of State Legislatures (June 25, 2020), <https://www.ncsl.org/research/elections-and-campaigns/alternative-voting-systems.aspx>.

132. In plurality voting, “voters select one candidate per race on a ballot and the candidate that receives the most votes wins.” *Id.*

133. Some states require a candidate to obtain a majority of votes to win. *See* Katharina Owens Hubler & Wendy Underhill, *Primary Runoff Elections*, 25 Nat’l Conference of State Legislatures (Aug. 2017), <https://www.ncsl.org/research/elections-and-campaigns/primary-runoff-elections.aspx>.

134. These states hold a “runoff election” if no candidate receives greater than 50% of the votes. *See id.*

135. Runoff elections are most common in primary elections, “where it is common to have a handful of candidates.” *See id.*

136. Despite the differences in these two systems, they both boast a relatively high full voter participation rate.

137. Recall that a fully participating voter is one who marks his ballot so that it is guaranteed to be counted in the final, determinative round. In a plurality election, full voter participation is achieved by casting one ballot for the race in question.

138. In Maine, the average rate of full participation rate in contested plurality elections is 97.3%. McCarty Report at 13.

139. In runoff elections, full participation is achieved when a voter casts one ballot in the initial election, and one ballot in the runoff election. *Id.* at 15.

140. Maine does not use runoff elections. In jurisdictions that do use runoff elections, the average rate of full voter participation ranges from 56% to 91%. *Id.* at 15–16.

141. In ranked-choice voting elections, full participation is achieved when a voter ranks at least  $n-1$  distinct candidates—where  $n$  is the number of candidates—and does not overvote any of the ranks. *Id.* at 10.

142. In the 2018 Congressional Election, the rate of full voter participation was **38%**. *Id.* at 15–16.

143. In the 2018 Gubernatorial Primary, the rate of full voter participation was **35%**. *Id.*

144. In the 2018 Congressional Primary, the rate of full voter participation was **47%**. *Id.*

145. The story is the same for ballot exhaustion.

146. The average rate of ballot exhaustion in ranked-choice elections is 10.8%—though variables like the number of candidates often drive the rate higher than 20%. *Id.* at 6.

147. In plurality races in Maine, ***less than 3%*** of ballots are discarded such that they do not count toward the final result. *Id.* at 13.

148. Ranked-choice voting results in a significant *decrease* in full voter participation and a significant *increase* in exhausted ballots when compared to plurality elections and traditional runoff elections. *Id.* at 13–16.

149. *Second*, lack of full participation falls disproportionately on older and less educated voters. *Id.* at 16–21.

150. The data show that towns with higher shares of voters over the age of 65 and voters that do not have a college education generate lower rates of full participation. *Id.*

151. There is no reason to think that these voters are more likely than others to make an intentional choice to put their ballots at risk of exhaustion.

152. Rather, this finding supports the conclusion that a large number of voters are not fully participating because they do not understand ranked-choice voting and/or it is otherwise burdensome. *Id.* at 21–22.

153. *Third*, at least 17,352 voters cast ballots in a way that is fundamentally inconsistent with an informed choice to place themselves at risk of disenfranchisement. *Id.* at 11–12. These voters’ ballots “defy any clear strategic or logical reason” and “cannot be attributed to voter choice.” *Id.*

154. As a concrete example, nearly 2,000 voters ranked the same candidate in non-consecutive rounds of the 2018 Congressional Election. *Id.* at 12. A voter would meet this criterion if, for example, she voted for Bruce Poliquin in the first rank, Jared Golden in the second rank, and Bruce Poliquin again in the third rank. *Id.*

155. Unlike, for example, voters who rank only a single candidate—which *could* conceivably be interpreted as a protest vote<sup>3</sup>—these types of voting patterns reflect a fundamental

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<sup>3</sup> The other evidence highlighted in this section and the experiences of Plaintiffs Duane R. Lander and Sterling B. Robinson, however, show that there are almost certainly a significant number of voters that voted in this way because they did not understand the system. See Lander Declaration ¶¶ 8–17; Robinson Declaration ¶¶ 9–14.

misunderstanding of ranked-choice voting.

does it...?

156. *Fourth*, Plaintiffs’ experience shows that many voters do not fully participate because they do not understand the mechanics of ranked-choice voting.

157. Plaintiffs Sterling B. Robinson and Duane R. Lander attested that they did not fully participate in the 2018 Congressional Election because they did not understand the mechanics of ranked-choice voting. Lander Declaration ¶¶ 8–12; Robinson Declaration ¶¶ 9–14.

158. Mr. Sterling and Mr. Lander did not “choose” to put themselves at risk of not having their respective ballots counted. *Id.*

159. Mr. Sterling and Mr. Lander are also worried about voting in the 2020 Senatorial Election because—even after participating in the 2018 Congressional Election and after attempts to better understand ranked-choice voting—they are still worried that they do not fully understand how the RCV Act works and may spoil or truncate their ballot, or effectuate a result they do not intend. Lander Declaration ¶¶ 12, 16–17; Robinson Declaration ¶¶ 18–19.

#### **EVEN VOTERS WHO FULLY PARTICIPATE ARE BURDENED BY RCV**

160. Many voters are burdened even when they fully participate in a ranked-choice election because they are compelled to express support for and associate with candidates who violate their political convictions, as a condition of having their vote counted.

not  
compelled

161. In ranked-choice voting, unlike virtually every other election system, voters are required to cast votes for the entire slate of candidates appearing on the ballot if they want to ensure that their vote is counted.

162. In effect, voters are put to a Hobson’s Choice: (i) express support for and associate with only candidates who they truly believe in—and risk disenfranchisement, or (ii) express support for and associate with candidates whom violate their political convictions—and ensure their vote is

not at all abnormal

counted.

163. For example, Plaintiffs Robert Hagopian and James T. Trudel ranked every candidate in the 2018 Congressional Election even though they supported only Bruce Poliquin. Hagopian Declaration ¶¶ 8–15; Trudel Declaration ¶¶ 8–15.

164. Mr. Hagopian and Mr. Trudel would not have voted for the other candidates but for their (correct) fear that their ballots would have been at risk of not being counted if they failed to rank the entire slate of candidates who appeared on the ballot. *Id.*

165. Mr. Hagopian and Mr. Trudel were thus compelled to express support for and associate with candidates with whom they would have preferred to not express support or associate.

166. While the ballots of voters like Mr. Hagopian and Mr. Trudel are counted, these voters are burdened.

### **THE 2020 GENERAL ELECTION**

167. Maine voters will elect one member to the U.S. Senate in the general election on November 3, 2020, and two members to the U.S. House of Representative in the general election held that same day.

168. The primary elections held on July 14, 2020, identified the party candidates who will advance to the general elections.

169. The deadline for non-party candidates to submit petitions to appear on the ballot in Maine's 2020 general election was July 1, 2020, pursuant to the Governor's extended deadline. *See* Me. Rev. Stat. tit. 21-A § 354(8-A); *see also* Me. Exec. Order No. 39 FY 19/20, § I.B.2 (Apr. 10, 2020).

170. Only party candidates are participating in the 2020 election for Maine's First and Second Congressional Districts. These elections thus do not involve the issues raised in this Complaint.

171. The 2020 Senatorial Election will include Susan Collins (R), Sara Gideon (D), Max Linn (I), and Lisa Savage (I).<sup>4</sup>

172. This election will be conducted pursuant to the RCV Act. The respective candidates will be listed on the ballot, and voters will be instructed to rank them in order of preference.

173. To achieve full participation in the 2020 Senatorial Election, voters will have to rank at least three distinct candidates and not overvote any of the ranks. This is similar to the 2018 Congressional Election, where full participation required voters to rank at least three distinct candidates and not overvote any of the ranks.

174. The rate of full voter participation in the 2020 Senatorial Election is likely to be similar to the dismal rate of full participation in the 2018 Congressional Election.

175. The rate of ballot truncation and ballot spoliation may be even higher in the 2020 Senatorial Election due to the Covid-19 pandemic.

176. As a result of Covid-19, more voters are expected to vote by mail.

177. Unlike in-person voting, an individual who votes by mail does not have access to Maine's Accessible Voting System or local election officials whom he or she may ask for help. See Sec'y of State, *Maine Voter Guide Part 2: Casting Your Ballot* (last visited July 9, 2020), <https://www.maine.gov/sos/cec/elec/voter-info/videotranscript.html#part2>. Given the fact that the complexity of RCV is directly preventing many Mainers from fully participating, the lack of available assistance is likely to cause the 2020 full voter participation numbers to be even worse than the 2018 numbers.

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<sup>4</sup> There is also a pending lawsuit that may result in another independent candidate—Tiffany Bond—being placed on the ballot. See generally *Bond v. Dunlap et al.*, No. 1:20-cv-00216 (D. Me. filed June 19, 2020).



**PLAINTIFFS' RIGHT TO VOTE WILL BE UNCONSTITUTIONALLY BURDENED BY  
RANKED-CHOICE VOTING IN THE UPCOMING ELECTION**

178. Plaintiff Robert Hagopian ranked Bruce Poliquin in the first round of the 2018 Congressional Election, followed by the independent candidates, followed by Jared Golden. Hagopian Declaration ¶ 9.

179. Mr. Hagopian completed his ballot in this manner to ensure that his vote was counted and to put additional candidates between his first choice, Bruce Poliquin, and his last choice, Jared Golden. *Id.* ¶ 10.

180. Bruce Poliquin was the only candidate Mr. Hagopian truly supported. *Id.* ¶ 11.

181. Mr. Hagopian did not wish to express support for the other candidates because they stood for principles that violated his political convictions. *Id.* ¶ 12.

182. However, Mr. Hagopian correctly understood that if Bruce Poliquin were eliminated, his ballot would be discarded if he did not vote in additional rounds. *Id.* ¶ 13.

183. Accordingly, Mr. Hagopian voted for candidates other than Bruce Poliquin to ensure that his ballot was counted and to prevent Jared Golden from being elected. *Id.* ¶ 14.

184. Were it not for ranked-choice voting, Mr. Hagopian would not have supported candidates other than Bruce Poliquin. *Id.* ¶ 15.

185. Mr. Hagopian plans to vote in the 2020 Senatorial Election. *Id.* ¶ 16.

186. Mr. Hagopian wants to ensure that his vote will be counted in the 2020 Senatorial Election. *Id.* ¶ 17.

187. In the 2020 Senatorial election, Mr. Hagopian plans to rank Susan Collins first, followed by the independent candidates, followed last by Sara Gideon. *Id.* ¶ 18.

188. Mr. Hagopian does not support Sara Gideon or the independent candidates. *Id.* ¶ 19.

189. However, Mr. Hagopian will rank those candidates on his ballot to ensure that it is

counted. *Id.*

190. Mr. Hagopian will have to violate his political convictions once again in order to ensure that his vote is counted. *Id.* ¶ 20.

191. Accordingly, Mr. Hagopian will once again be compelled to speak and associate as a condition of exercising his fundamental right to vote.

192. Mr. Hagopian's right to vote will be burdened by the RCV Act in the 2020 Senatorial Election.

193. Plaintiff Duane R. Lander ranked Bruce Poliquin in each round of voting in the 2018 Congressional Election. In other words, Mr. Lander filled in the "circle" for Poliquin four times. Lander Declaration ¶ 10.

194. Mr. Lander was confused about the way ranked-choice voting worked in the 2018 Congressional Election. *Id.* ¶ 9.

195. Mr. Lander also did not want to vote for any other candidate. *Id.* ¶ 10.

196. Mr. Lander was under the impression that he needed to fill in each circle with Bruce Poliquin to ensure that his vote was counted. *Id.* ¶ 11.

197. Mr. Lander believed that if he filled in only the first circle for Poliquin, his vote would not be counted. He knows that many people voted that way and was under the impression that their votes were not counted. *Id.* ¶ 11.

198. Mr. Lander did not understand how votes for other candidates would be counted. *Id.* ¶ 12.

199. Mr. Lander did not understand that Poliquin could receive the highest number of votes in the first round and lose in the second round. *Id.* ¶ 12.

200. Mr. Lander still does not understand how votes for other candidates could be recounted

not  
compelled

as votes for the eventual winner, Jared Golden. *Id.*

201. The significance of a vote for another candidate was never explained to Mr. Lander prior to his vote. *Id.*

202. Since the 2018 Congressional Election, Mr. Lander has attempted to better understand ranked-choice voting. *Id.* ¶ 13.

203. Among other things, Mr. Lander has had multiple conversations with experts in ranked-choice voting. *Id.*

204. Mr. Lander plans to vote in the 2020 Senatorial Election. *Id.* ¶ 14.

205. Mr. Lander plans to rank Susan Collins in every round of his ballot in the 2020 Senatorial Election. *Id.* ¶¶ 15–16.

206. Mr. Lander is under the impression that he must fill in the “circle” for Susan Collins for each round in order to ensure that his vote is counted. *Id.* ¶ 16.

207. Mr. Lander also does not want to vote for Sara Gideon or any of the other independent candidates. *Id.* ¶ 17.

208. Mr. Lander does not want to risk having his ballot exhausted. *Id.* ¶ 17.

209. However, if Mr. Lander completes his ballot as planned, he will not fully participate in the election, and his ballot may be exhausted.

210. Mr. Lander’s right to vote will be burdened by the RCV Act in the 2020 Senatorial Election.

211. Plaintiff Sterling B. Robinson ranked Bruce Poliquin in the first round of voting in the 2018 Congressional Election and did not rank any additional candidates. Robinson Declaration ¶ 10.

212. Mr. Robinson completed his ballot in this manner, because after researching the ranked-

choice voting options, he was under the mistaken impression that it was not necessary to fill out additional rounds of the ballot to ensure that his ballot would not be exhausted. *Id.* ¶ 11.

213. Mr. Robinson was confused regarding the actions necessary to ensure that his vote was counted in each round of ranked-choice voting. *Id.* ¶ 12.

214. Mr. Robinson did not understand the significance of ranking other candidates on the ballot in the 2018 Congressional Election. *Id.* ¶ 13.

215. In particular, Mr. Robinson did not understand that the failure to rank additional candidates risked having his ballot exhausted. *Id.*

216. Had Mr. Robinson understood the significance of ranking other candidates, Mr. Robinson would have ranked additional candidates in the 2018 Congressional Election. *Id.* ¶ 14.

217. Mr. Robinson plans to vote in the 2020 Senatorial Election. *Id.* ¶ 15.

218. In the 2020 Senatorial Election, Mr. Robinson plans to rank Susan Collins as his first choice and additional candidates to ensure that his ballot is fully counted. *Id.* ¶ 16.

219. Mr. Robinson's goal is to ensure that his vote is counted. *Id.* ¶ 17.

220. However, Mr. Robinson still does not understand how to rank the candidates to both ensure that his preferred candidate is in the best position to win and ensure that his ballot will not be exhausted. *Id.* ¶ 18.

221. Mr. Robinson does not know where or how to research strategic ranked-choice voting, and he is concerned that in attempting to ensure his ballot is counted, he could unknowingly undermine his voting interests. *Id.* ¶ 19.

222. Mr. Robinson's right to vote will be burdened by the RCV Act in the 2020 Senatorial Election.

223. Plaintiff James T. Trudel ranked Bruce Poliquin in the first round of the 2018

Congressional Election, followed by the independent candidates, followed by Jared Golden. Trudel Declaration ¶ 9.

224. Mr. Trudel completed his ballot in this manner to ensure that his vote was counted and to put additional candidates between his first choice, Bruce Poliquin, and my last choice, Jared Golden. *Id.* ¶ 10.

225. Bruce Poliquin was the only candidate Mr. Trudel truly supported. *Id.* ¶ 11.

226. Mr. Trudel did not wish to express support for the other candidates because they stood for principles that violated his political convictions. *Id.* ¶ 12.

227. Mr. Trudel correctly understood that if Bruce Poliquin were eliminated, his ballot would be discarded if he did not vote in additional rounds. *Id.* ¶ 13.

228. Accordingly, Mr. Trudel voted for candidates other than Bruce Poliquin to ensure that his ballot was counted and to prevent Jared Golden from being elected. *Id.* ¶ 14.

229. Were it not for ranked-choice voting, Mr. Trudel would not have supported candidates other than Bruce Poliquin. *Id.* ¶ 15.

230. Mr. Trudel plans to vote in the 2020 Senatorial Election. *Id.* ¶ 16.

231. In the 2020 Senatorial Election, Mr. Trudel wants to ensure that his vote will be counted. *Id.* ¶ 17.

232. Mr. Trudel therefore plans to rank Susan Collins first, followed by the independent candidates, followed last by Sara Gideon. *Id.* ¶ 18.

233. Mr. Trudel does not support Sara Gideon or the independent candidates. *Id.* ¶ 19.

234. However, Mr. Trudel will rank them on his ballot to ensure that it is counted. *Id.*

235. As a result, Mr. Trudel will have to violate his political convictions once again in order to ensure that his vote is counted. *Id.* ¶ 20.

236. Accordingly, Mr. Trudel will once again be compelled to speak and associate as a condition of exercising his fundamental right to vote.

237. Mr. Trudel's right to vote will be burdened by the RCV Act in the 2020 Senatorial Election.

**NO STATE INTEREST JUSTIFIES DENYING MAINERS THE RIGHT TO FULLY PARTICIPATE IN FEDERAL ELECTIONS**

238. The RCV Act does not advance any legitimate governmental interest.

239. Maine does not have a legitimate interest in putting the majority of Maine voters at risk of disenfranchisement.

240. Maine does not have a legitimate interest in limiting a purported "spoiler effect" associated with plurality voting.

241. The RCV Act does not diminish the spoiler effect. Instead, it introduces new "spoiler effects" due to quirks in the ranked-choice voting system, like the "non-monotonicity" problem. McCarty Report at 26–27.

242. The RCV Act does not advance a purported interest in "nuanced" voter expression. To the contrary, the empirical evidence shows that the RCV Act actually increases the risk of disenfranchisement and forces voters to express views contrary to their beliefs. *Id.* at 5–16.

243. The RCV Act does not advance a purported interest in voter participation. It actually reduces the rate of full participation among voters and results in more ballots not being counted toward the final election result. *Id.* at 5–16, 23–25. In addition, there is no academic literature that has observed "a boost in turnout associated with switching to RCV from plurality voting," and several that have observed a decline in turnout. *Id.* at 23.

244. The RCV Act does not advance a purported interest in ensuring that the winning candidate achieves majority support. In the 2018 Congressional Election, Maine declared Jared Golden the

winner even though he received only 49.2% of ballots cast. McCarty Report at 27. And this is no anomaly: *most* RCV elections that move past the first round result in victors that fail to garner a majority of votes cast. McCarty Report at 27.

245. Plurality elections and majority runoff elections are less burdensome on Plaintiffs' rights.

246. There is no conceivable state interest that would justify the burden on Plaintiffs' constitutional rights.

**PREVIOUS FEDERAL LITIGATION INVOLVING THE EFFECTS OF RANKED-CHOICE VOTING ON MAINE VOTERS**

247. In December 2018, a Court within this District declined to set aside the results of the 2018 Congressional Election. In that case the Court concluded, among other things, that the plaintiffs "ha[d] not demonstrated that their votes received less weight" as a result of the RCV Act, *Baber v. Dunlap*, 376 F. Supp. 3d 125, 140–41 (D. Me. 2018), *appeal dismissed*, No. 18-2250, 2018 WL 8583796 (1st Cir. Dec. 28, 2018), or that any voters "were disenfranchised during tabulation because they cast invalid overvotes or undervotes," *id.* at 143. *See also Baber v. Dunlap*, 349 F. Supp. 3d 68 (D. Me. 2018) (denying temporary restraining order).

248. The Plaintiffs in that case did not present the Court with evidence that nearly two thirds of Maine voters had been denied full participation in the 2018 Congressional Election and thus had been placed at risk of disenfranchisement. Nor did they show, as Plaintiffs do here, that the average rate of full voter participation and the actual rate of disenfranchisement are much worse under the RCV Act than under other types of voting systems. Finally, Plaintiffs in that case lacked the empirical demographic data demonstrating that the RCV Act disproportionately burdens the right to vote of older and less-educated Mainers.

**FIRST CLAIM FOR RELIEF**

**(First and Fourteenth Amendments, as enforced by 42 U.S.C. § 1983 – UNDUE BURDEN  
ON THE RIGHT TO VOTE)**

(On Behalf of All Plaintiffs)

249. Plaintiffs incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though set forth fully herein.

250. Under the *Anderson-Burdick* balancing test, “[a] court considering a challenge to a state election law must weigh ‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate’ against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’” *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)). This test employs a flexible, sliding scale that analyzes “severe” burdens on First and Fourteenth Amendment rights under “strict scrutiny,” and lesser burdens under less exacting scrutiny. *See Lyman v. Baker*, 954 F.3d 351, 376 & n.15 (1st Cir. 2020).

251. In addition, burdens that “threaten to work patent and fundamental unfairness” or “disenfranchise[]” voters “constitute a violation of due process.” *Bonas v. Town of N. Smithfield*, 265 F.3d 69, 74–75 (1st Cir. 2001).

252. Under 42 U.S.C. § 1983, every person acting under color of state law who deprives another person of his or her constitutional rights is also liable at law and in equity.

253. The RCV Act denied Plaintiffs full participation in the 2018 Congressional Election and will deny them full participation in the 2020 Senatorial Election.

254. The average rate of full voter participation in contested plurality races in Maine is 97.3%. McCarty Report at 13.

255. The average rate of full voter participation in runoff elections is between 56% and 91%.



*Id.* at 15–16.

256. The rate of full voter participation in the 2018 Congressional Election was 38%. *Id.*

257. The rate of full voter participation in the 2018 Gubernatorial Primary was 35%. *Id.*

258. The rate of full participation in the 2018 Congressional Primary was 47%. *Id.*

259. The reductions in full voter participation caused by the RCV Act severely burden Plaintiffs' First and Fourteenth Amendment rights by placing them and other Maine voters at risk of disenfranchisement even though they intend to show up at the polling place and cast valid votes.

260. Voters who do not achieve full participation are also denied the opportunity afforded other voters to transfer their vote to a continuing candidate after the first round of tabulation.

261. The RCV Act disenfranchises in every election enough voters as is necessary to manufacture a “majority.”

262. The RCV Act's flaws amount to a severe burden on the fundamental right to vote.

263. The RCV Act severely burdens Plaintiffs' fundamental right to vote.

264. **First**, there is substantial empirical evidence that voters are burdened because the RCV Act prescribes a system that is complicated and that voters do not fully understand. McCarty Report at 22 (“Examining the data, it becomes clear that the complexity of the RCV system leads to voter confusion which prevents voters from fully participating.”).

265. Indeed, Plaintiffs Duane R. Lander and Sterling B. Robinson were unable to successfully complete their ballot in the 2018 Congressional Election because they found it incomprehensible. Lander Declaration ¶¶ 8–12; Robinson Declaration ¶¶ 9–14.

266. Both have expressed uncertainty regarding ranked-choice voting in the 2020 Senatorial Election. Lander Declaration ¶¶ 12, 16; Robinson Declaration ¶¶ 18–19.

267. **Second**, some voters may not complete their ballots because they prefer one candidate

and conclude that it is too burdensome to research every additional candidate running for the same position, and to consider every possible hypothetical matchup.

268. Unlike traditional runoff elections—where the voter is given an opportunity to assess the remaining candidates’ platforms in a discrete election with real stakes—ranked-choice voting requires voters to assess the relative strengths and weaknesses of every candidate and express opinions on hypothetical candidate matchups that may never occur.

269. Indeed, voters are less likely to complete their ballot as more candidates appear on the ballot, showing that lack of voter participation stems from this burden and/or voter confusion. McCarty Report at 6–9.

270. **Third**, other voters understand the RCV Act system perfectly and are willing to conduct burdensome research to become informed about hypothetical matchups, but are determined to exercise their constitutional right to associate with only their preferred candidate.

271. In the 2020 Senatorial Election, Mr. Lander intends to vote for only Republican Susan Collins because, *inter alia*, he does not want to cast a vote for Ms. Gideon or the independent candidates. Lander Declaration ¶ 17.

272. If Susan Collins does not continue to the next round, however, Mr. Lander’s ballot will, under the statute, be “not counted,” Me. Rev. Stat. tit. 21-A, §§ 723-A(1)(D), (2), and he will have been deprived of the right to vote.

no, he voted, and there's no right to cast an effective vote

273. Additionally, Plaintiffs Robert Hagopian and James T. Trudel—while they plan to rank every candidate and thus ensure their votes are counted—are burdened because they will complete their ballots under duress.

274. Mr. Hagopian and Mr. Trudel support only Susan Collins and are thus burdened by the State’s imposition of a requirement for them to support and associate with candidates of whom

they do not approve as a condition of ensuring that their ballots are in fact counted. Hagopian Declaration ¶¶ 16–20; Trudel Declaration ¶¶ 16–20.

275. These burdens on the right to vote are not hypothetical. In the 2018 race for Maine’s Second Congressional District, more than **180,000** votes were subject to this risk and more than **14,000** were, in fact, not counted. McCarty Report at 12–13.

276. Moreover, if Plaintiffs’ preferred candidates continue to the second round, Plaintiffs will not be permitted to change their votes. Only voters who voted for an eliminated candidate in the first round and chose to associate with additional candidates will be allowed to change their vote in the next round.

277. Maine does not have a legitimate governmental interest that justifies the burden on Plaintiffs’ fundamental right to vote.

278. The governmental interests Maine could assert are not furthered—and in fact are undermined—by ranked-choice voting. Moreover, the RCV Act is not an appropriately tailored means of furthering any purported governmental interest.

279. Accordingly, the RCV Act unconstitutionally burdens Plaintiffs’ rights under the First and Fourteenth Amendments.

**SECOND CLAIM FOR RELIEF**  
**(First and Fourteenth Amendment, as enforced by 42 U.S.C. § 1983 – COMPELLED  
SPEECH AND ASSOCIATION)**  
(On Behalf of All Plaintiffs)

280. Plaintiffs incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though set forth fully herein.

281. “[F]reedom of speech ‘includes both the right to speak freely and the right to refrain from speaking at all.’” *Janus v. Am. Fed’n of State, Cty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2463 (2018) (quoting *Wooley v. Maynard*, 430 U.S. 705, 714 (1977)) (collecting cases).

282. “[T]he Government may not deny a benefit to a person on a basis that infringes his constitutionally protected freedom of speech even if he has no entitlement to that benefit.” *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 570 U.S. 205, 214 (2013) (citation omitted).

283. Under 42 U.S.C. § 1983, every person acting under color of state law who deprives another person of his or her constitutional rights is also liable at law and in equity.

284. The RCV Act conditions a government benefit on engaging in unwanted expressive conduct.

285. In particular, the RCV Act confers a benefit—a higher likelihood of affecting the outcome of an election—on voters ranking additional candidates on their ranked-choice ballot.

286. As a result, voters may rank candidates that they find objectionable solely to receive the benefit of ensuring that their ballot is counted in the final round of tabulation.

287. For example, Plaintiffs Robert Hagopian and James T. Trudel were compelled to express support for candidates in the 2018 Congressional Election who were contrary to their political convictions in violation of their speech and associational rights, solely to preserve their fundamental right to vote. Hagopian Declaration ¶¶ 8–15; Trudel Declaration ¶¶ 8–15.

288. Mr. Hagopian and Mr. Trudel will likewise be compelled to vote in the same manner in the 2020 Senatorial Election. Hagopian Declaration ¶¶ 16–20; Trudel Declaration ¶¶ 16–20.

289. Likewise, Plaintiff Sterling B. Robinson plans to rank candidates he does not support to ensure that his ballot is ultimately counted. Robinson Declaration ¶ 16.

290. On the other hand, Duane R. Lander plans to vote for only Susan Collins in the 2020 Senatorial Election because, *inter alia*, he does not want to vote for the other candidates. Lander Declaration ¶¶ 16–17.

291. Ranking candidates on a ranked-choice ballot is expressive conduct.

292. It is also expressive association.

293. Unlike virtually every other method of voting, many—if not most—of the candidates ranked by a voter will have no effect on the outcome of the election.

294. The RCV Act requires more speech and association from voters than is necessary to determine the outcome of an election, unlike traditional plurality or runoff elections.

295. Under the RCV Act, voters like Plaintiffs will be compelled to choose between (i) engaging in expressive conduct that violates their firmly held political convictions, or (ii) risking having their ballots discarded in the 2020 Senatorial Election.

296. The RCV Act thus unconstitutionally conditions Mainers' fundamental right to vote on engaging in unwanted expressive conduct.

**THIRD CLAIM FOR RELIEF**  
**(Fourteenth Amendment, as enforced by 42 U.S.C. § 1983 – PROCEDURAL DUE PROCESS)**  
**(On Behalf of All Plaintiffs)**

297. Plaintiffs incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though set forth fully herein.

298. The Fourteenth Amendment provides that states shall not “deprive any person of life, liberty, or property, without due process of law[.]” U.S. Const. amend. XIV, § 1.

299. Under 42 U.S.C. § 1983, every person acting under color of state law who deprives another person of his or her constitutional rights is also liable at law and in equity.

300. The RCV Act denies Plaintiffs' fundamental right to vote without due process.

301. The RCV Act will inhibit the ability of Plaintiffs and Maine voters writ large from achieving full participation in the 2020 Senatorial Election, thus placing them at risk of disenfranchisement.

302. The RCV Act will cause a substantial number of Maine voters—potentially including

Plaintiffs—to have their ballots exhausted before the final round of tabulation in the 2020 Senatorial Election.

303. The RCV Act does not provide Plaintiffs or other voters with notice or opportunity to cure a defective ballot before it is exhausted.

304. The RCV Act does not provide an appeal process to challenge an exhaustion decision.

305. The RCV Act thus violates the Fourteenth Amendment's Due Process Clause.

**FOURTH CLAIM FOR RELIEF**  
**(Fourteenth Amendment, as enforced by 42 U.S.C. § 1983 – EQUAL PROTECTION)**  
(On Behalf of All Plaintiffs)

306. Plaintiffs incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though set forth fully herein.

307. “[I]n statewide and in congressional elections, one person’s vote must be counted equally with those of all other voters in a State[.]” *Reynolds v. Sims*, 377 U.S. 533, 560 (1964).

308. Under 42 U.S.C. § 1983, every person acting under color of state law who deprives another person of his or her constitutional rights is also liable at law and in equity.

309. For the reasons articulated herein, the RCV Act accords some votes more weight than others.

310. Accordingly, the RCV Act violates the Fourteenth Amendment's Equal Protection Clause.

**FIFTH CLAIM FOR RELIEF**  
**(Twenty-Sixth Amendment, as enforced by 42 U.S.C. § 1983 – ABRIDGEMENT OF THE RIGHT TO VOTE BASED ON AGE)**  
(On Behalf of All Plaintiffs)

311. Plaintiffs incorporate by reference all prior paragraphs of this Complaint as though set forth fully herein.

312. The Twenty-Sixth Amendment provides that “[t]he right of citizens of the United States,

who are eighteen years of age or older, to vote, shall not be denied or abridged by the United States or by any State on account of age.” U.S. Const. amend XXVI, § 1.

313. The RCV Act abridges the rights of older voters by preventing a substantial number of voters over the age of 65 from achieving full participation in the electoral process and by exhausting their ballots at higher rates.

314. Accordingly, the RCV Act violates the Twenty-Sixth Amendment.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request that this Court enter judgment in its favor and against Defendants, as follows:

- A. **Declare** that the RCV Act violates Plaintiffs’ rights and the United States Constitution;
- B. Preliminarily and permanently **enjoin** Defendants and any of their subordinates from enforcing the RCV Act;
- C. **Order** Defendants to count Plaintiffs’ ballots in the 2020 Senatorial Election;
- D. **Award Plaintiffs their allowable costs and attorney’s fees** pursuant to 42 U.S.C. § 1988 or any other basis in law, as appropriate;
- E. Grant such further and additional relief as this Court deems just and proper.

July 22, 2020

By: /s/ Fred W. Bopp III  
Fred W. Bopp III  
**BOPP & GUECIA**  
298 Main Street  
Yarmouth, ME 04096  
Telephone: 207-846-6111  
fbopp@boppguecia.com

Michael E. Toner\*  
Stephen J. Obermeier\*  
Brandis L. Zehr\*  
Jeremy J. Broggi\*  
**WILEY REIN LLP**  
1776 K Street NW  
Washington, DC 20006  
Telephone: 202-719-7000  
MToner@wiley.law  
SObermeier@wiley.law  
BZehr@wiley.law  
JBroggi@wiley.law

*Counsel for Plaintiffs*

*\*Certifications for Admission Pro Hac  
Vice Forthcoming*



# EXHIBIT A

**Expert Report of Nolan McCarty, Ph.D.  
Professor of Politics and Public Affairs at Princeton University**

***Hagopian, et al. v. Dunlap, et al.,*  
U.S. District Court for the District of Maine**

**July 22, 2020**

## **TABLE OF CONTENTS**

|   |    |
|---|----|
| Table of Figures and Tables.....  | ii |
| Expert Qualifications.....  | 1  |
| Summary of Findings and Analysis.....   | 2  |
| Background.....   | 3  |
| Analysis.....   | 5  |
| I.    RCV Resulted in a Significant Number of Maine Voters Not Fully Participating in the<br>2018 Maine Elections ..... | 5  |
| A.    Exhausted Ballots in RCV Elections.....   | 5  |
| B.    Fully Participating Ballots.....  | 9  |
| C.    Comparing Participation in Maine’s RCV with Plurality and Runoff Systems...                                       | 13 |
| D.    Who Truncates Their Ballot and Risks Exhaustion? .....  | 16 |
| II.    Low Full-Participation Rates in Maine Cannot Be Explained by Voter Choice or<br>Expression.....                  | 21 |
| III.   The Purported Benefits of RCV Are Non-Existent.....  | 22 |
| A.    Effects on Smaller Parties.....   | 22 |
| B.    Effects on Turnout and Engagement.....  | 23 |
| C.    The Spoiler Effect.....   | 26 |
| D.    Non-Majority Winners.....   | 27 |
| Conclusion.....   | 27 |

## **TABLE OF FIGURES AND TABLES**

|   |    |
|---|----|
| Figure 1: Exhausted Ballots for 98 RCV Elections.....                                     | 6  |
| Figure 2: Exhausted Ballots and the Number of Candidates.....                             | 7  |
| Figure 3: Ballot Exhaustion Over Time .....   | 8  |
| Table 1: Correlates of Ballot Exhaustion .....  | 8  |
| Figure 4: Example of Cast Ballots in Maine 2nd Congressional District Election.....       | 9  |
| Table 2: Non-Strategic Voter Categories .....   | 11 |
| Table 3: Exhaustion, Votes Not Counted, and Lack of Full Participation.....               | 12 |
| Table 4: Dropoff Rates in Plurality Runoff Elections.....                                 | 14 |
| Table 5: Full Participation Rates Across Election Types.....                              | 15 |
| Figure 5: Exhausted Ballots and Age.....  | 17 |
| Figure 6: Exhausted Ballots and Education.....  | 18 |
| Figure 7: Truncated Ballots and Education .....   | 18 |
| Figure 8: Truncated Ballots and Age .....   | 19 |
| Table 6: Maine Second Congressional District General Election 2018.....                   | 19 |
| Table 7: Maine Democratic Gubernatorial Primary 2018.....                                 | 20 |
| Table 8: Maine Second Congressional District Democratic Primary 2018.....                 | 21 |
| Figure 9: Rates of Total Undervoting in Contested State Senate Elections .....            | 24 |
| Figure 10: Total Undervoting in Competitive State Senate Elections .....                  | 25 |
| Table 9: Comparison of Total Undervoting in RCV Elections and State Senate Elections..... | 25 |

### **EXPERT QUALIFICATIONS**

I am the Susan Dod Brown Professor of Politics and Public Affairs at Princeton University and currently the Director of the Princeton Data-Driven Social Science Initiative. I recently concluded my service as Chair of the Department of Politics at Princeton University, and I was formerly the associate dean at the School of Public and International Affairs at Princeton University. I specialize in U.S. politics, democratic political institutions, and political game theory, with a research focus on political polarization and ideology and statistical voting analysis. I studied ranked-choice voting (“RCV”) in preparation for publication of my book, “Polarization: What Everyone Needs to Know,” which was published in July 2019 and includes a discussion of RCV.

I received my Ph.D. and M.S. in Political Economy from Carnegie Melon University and my A.B. in Economics with Honors from the University of Chicago. I have taught graduate-level courses (Ph.D.) in game theory and political theory, American political institutions and a variety of political and methodology classes at Princeton University and Columbia University. I have also taught courses in business, legislative politics, and advanced econometrics at the master’s level at Princeton University and the University of Southern California. Additional information about my professional experience as a political scientist and economist, including prior expert testimony, publications, and affiliations, can be found in my curriculum vitae, attached as Appendix A.

I have been asked by attorneys for Plaintiffs to examine the effects of RCV on voter participation in the State of Maine, and how participation in RCV systems in Maine and elsewhere compares to plurality and runoff systems. I have also been asked to evaluate the purported benefits of RCV identified by RCV supporters.

In order to perform this analysis, I have reviewed data from 98 municipal RCV elections, cast-ballot data from the 2018 Maine Second Congressional District general election (“2nd CD election”), 2018 Maine Democratic Congressional primary election (“Congressional primary”), and the Democratic Gubernatorial primary election (“Gubernatorial primary”), voter registration and commercial records for Maine voters who participated in the 2018 general election (“Maine voter file”), election-return data from the 2018 Maine state senate elections, data on the 2018 Congressional elections in California and Washington, and data on majority runoff elections. A description of the data sources relied upon for this report is attached as Appendix B. My analysis is guided by my training and experience as a political scientist and economist, including my work with statistical voter analysis and RCV.<sup>1</sup>

I am being compensated for my time in preparing a report and preparing or providing any testimony. My billing rate is \$400 for services performed in connection with this matter. In addition, I will be reimbursed for all reasonable out-of-pocket expenses incurred in connection with my analyses and testimony in this case. My compensation is not dependent on the outcome of this matter or the opinions expressed.

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<sup>1</sup> My conclusions stated herein are based upon my review of the information available to me at this time. I reserve the right to alter, amend, or supplement these conclusions based upon further study or based upon the availability of additional information, including the Maine July 2020 primary election data.

## SUMMARY OF FINDINGS AND ANALYSIS

The following is a report of my empirical findings and analysis, which demonstrates:

1. RCV resulted in a substantially lower “full participation” rate in Maine in 2018 as compared to plurality and runoff systems, where “full participation” means casting a ballot that could not be exhausted and thus is guaranteed to count toward the final outcome. This is particularly true in jurisdictions like Maine with more elderly and less-educated voters.
2. These results, as well as the high number of ballots cast that lack any clear rational explanation, demonstrate that the low “full participation” rate in Maine cannot be explained by deliberate voter choice alone. Indeed, the results demonstrate that voter confusion causes many voters not to fully participate. The inherent complexities of the system are preventing voters from fully participating and thus effectively disenfranchising large numbers of voters.
3. The purported benefits of RCV have not manifested in jurisdictions where RCV has been utilized over long periods of time.

As I outline in my report, an RCV system comes with a significant number of vices, many of which manifested themselves in the 2018 Maine elections.<sup>2</sup> Chief among them is that the system provides many significant impediments to full participation of the voters who choose to cast ballots. Central to this issue is the phenomenon of *exhausted* ballots. In an RCV election, ballots may become unusable in later rounds of tabulation when the voter has failed to rank any of the candidates that remain in contention. When such a ballot is cast aside after the first round of voting for this reason, it is said to be exhausted, and it is no longer counted for purposes of determining the “majority” winner. The academic literature and the analyses in my report demonstrate that **ballot exhaustion is pervasive in RCV elections, sometimes leading to the discarding of over 20% of the ballots during the final round of tabulation.** It also appears to be persistent, as rates of exhaustion do not decline over time. Jurisdictions that have used RCV for decades suffer from ballot exhaustion at similar rates as new adopters of the voting system.

The direct reason why ballot exhaustion is so pervasive is that voters rarely rank a sufficient number of candidates. Whenever a voter does not rank all of the candidates, she runs the risk of having her ballot exhausted. Unfortunately, because of the uncertainties in the level of support for various candidates, a voter may have a difficult time predicting whether or not her ballot will be exhausted. Moreover, the academic literature and my analysis of the 2018 Maine elections suggest a high likelihood that older and less-educated voters are most likely to vote an incomplete ballot, and thus, are most likely to submit an exhausted, uncounted ballot. These findings are troubling in that scholarly work has established that such incomplete (or *truncated*)

---

<sup>2</sup> I use the term “2018 Maine elections” to include the 2nd CD election, Congressional primary, and Gubernatorial primary. These are the only RCV elections to have taken place in Maine with reported data on individual ballots at the time I conducted my analysis. The state does not report data on individual ballots for RCV elections that are resolved in the first round of tabulation.

ballots can affect election outcomes in ways that are not transparent to voters and may work against their interests.

In addition, full participation in RCV is low compared to plurality and runoff elections. In plurality elections, full voter participation is the rule, and there are relatively few voters who fail to achieve full participation if they choose to vote at all. Even in a runoff election—which requires voters to choose to and make efforts to vote on two separate occasions and typically take place in primary elections that receive lower voter turnout in general—the percentage of exhausted ballots in an RCV election is not substantively different from a runoff election. But, in states where the majority runoff election occurs on the Federal Election Day, voter turnout actually *increases*, demonstrating a better performance than RCV in producing majority winners and better second-round voter participation.

These results demonstrate that the low full-participation rate in Maine cannot be explained by voter choice or expression alone. As demonstrated by the analysis below, the lack of full voter participation in Maine is due to problems inherent to RCV elections. The complexities of the system are causing voter confusion that is preventing many voters from fully participating.

Finally, as I outline in this report, the purported virtues of RCV are not realized by adoption:

1. There is little evidence that RCV improves the fortunes of smaller parties. Comparisons of legislative election outcomes in Australia, where RCV has been used since the 1920s with other Anglophone democracies, reveal that RCV does not encourage small party electoral success.
2. Similarly, there is little evidence that RCV boosts turnout or voter engagement. In fact, the academic debate on this point is consistent that voter turnout declines with the use of RCV. Original analyses demonstrate that Maine voters were no more attracted to voting in RCV elections than the plurality elections on the same ballot.
3. RCV does not eliminate “spoiler effects” or opportunities for manipulation. Instead, RCV changes the nature of the opportunities for strategic behavior and manipulation.
4. RCV does not guarantee that the winner receives a majority of the vote. In fact, the winner of an RCV election that goes beyond the first round fails to obtain support from a majority of voters most of the time.

### **BACKGROUND**

The use of RCV has gained traction over the past several years. In such systems, voters are asked to rank a set of candidates, and those rankings are then used to determine the election winners. An RCV system generally works as follows:

- Voters are asked to rank the candidates. In some systems, they can rank all of the candidates while others ask only that the voters rank up to a certain number of candidates.

- The first rank votes are counted. If any candidate receives a majority of the first rank votes, she is declared a winner. If there is no majority winner, the last place candidate, as well as any additional candidates that have been mathematically eliminated, are dropped.
- The votes are recounted using the first ranked votes of the remaining candidates and the second ranked votes of those who supported one of the eliminated candidates.
- If a candidate obtains a majority on this round, she is the winner. If not, the process continues until there is a winner.

Maine's RCV system generally follows these principles. *See generally* Me. Rev. Stat. tit. 21-A, § 723-A. In general, if no candidate receives more than 50% of the first-choice votes based on election returns, the RCV count proceeds to successive rounds of voting. "At the end of each round, if more than 2 candidates remain, the last-place candidate is defeated, and the vote for the next-highest-ranked continuing candidate on the defeated candidate's ballots is then counted in the next round. . . . In the final round, when only 2 continuing candidates remain, the candidate with the most votes in that round is the winning candidate." 29-250-535 Code Me. R. § 4.2(A).

Advocates of RCV tout many virtues. RCV, advocates contend, improves the electoral fortunes of small parties and independent candidates. By encouraging a larger set of candidates to contest office, advocates argue that voters are provided with more choice, which in turn should result in greater voter turnout and engagement. RCV elections also purportedly eliminate the possibility of spoiler candidates who siphon off too many votes from the most popular major candidate. Finally, RCV elections are said to be more legitimate because the winner has earned the support of a majority of the electorate.

Officials and RCV interest groups in Maine have made similar arguments. The Committee for Ranked Choice Voting in Maine, for example, asserts that

[RCV] gives more choice and more voice to voters. With RCV, you have the freedom to vote for the candidate you like best without worrying that you will help to elect the candidate you like least. Ranked Choice Voting eliminates vote-splitting and ensures that candidates who are opposed by a majority of voters can never win.<sup>3</sup>

The same group has also contended that RCV in Maine increases voter participation in democratic elections, reduces negative campaigning, results in greater choice for voters, and restores "majority rule."<sup>4</sup>

<sup>3</sup> The Committee for Ranked Choice Voting, <http://www.rcvmaine.com/> (last visited July 19, 2020).

<sup>4</sup> *See e.g.*, The Committee for Ranked Choice Voting, *FAQ: What are the benefits of voting with a ranked choice ballot?*, [http://www.rcvmaine.com/what\\_are\\_the\\_benefits\\_of\\_voting\\_with\\_a\\_ranked\\_choice\\_ballot](http://www.rcvmaine.com/what_are_the_benefits_of_voting_with_a_ranked_choice_ballot) (last visited July 19, 2020) (listing as benefits of RCV: "restores majority rule," "eliminates vote splitting," "more voice for voters," "more choice for voters," and "reduces incentives for negative campaigning" (capitalization altered)).



Were these virtues demonstrable, it might be difficult to argue against the advocates of RCV. Unfortunately, however, RCV imposes substantial costs. Most important, it results in substantial disenfranchisement of voters, as demonstrated in the 2018 Maine elections. Moreover, the electoral history of RCV as practiced in U.S. municipalities, other national legislatures, and the 2018 Maine elections fails to provide much evidence at all that the purported benefits of RCV have materialized.

## ANALYSIS

### I. RCV RESULTED IN A SIGNIFICANT NUMBER OF MAINE VOTERS NOT FULLY PARTICIPATING IN THE 2018 MAINE ELECTIONS

#### A. Exhausted Ballots in RCV Elections

A major problem observed in RCV elections is that increasing numbers of ballots cease to be relevant to the outcome of the election as the vote tabulation proceeds. In an RCV election, a ballot may become *exhausted* if the voter has not ranked a currently viable candidate. For example, if a voter ranks only one candidate and that candidate is eliminated in round 1, that voter contributed nothing to the second round voting tabulations, because an exhausted vote is no longer counted for purposes of determining the “majority” winner.<sup>5</sup> Specifically, a voter’s ballot may be exhausted if any of the following occur:

1. She has ranked only candidates who are no longer viable;
2. She has *overvoted* by selecting more than one viable candidate for highest rank of her viable candidates; or
3. She *undervotes* by skipping columns or rankings.<sup>6</sup>

My use of the term “exhausted ballot” is slightly narrower than as defined under Maine law. Under Maine law, a ballot can be “exhausted” even in the first round of voting if a voter leaves their ballot blank or overvotes in the first round. By contrast, I use the term “exhausted ballot” to refer to only ballots that are exhausted after the first round of tabulation—*i.e.*, ballots that successfully ranked at least one candidate before being exhausted. I use the term “total undervotes” or “all undervotes” to refer to both exhausted ballots—as defined herein—and ballots that are left blank in the first round of tabulation. Lastly, I use the term “ballots not counted” to refer to all ballots that are not tabulated in the final round. This term is slightly broader than “total undervotes” because it also includes first-found overvotes. In other words, “ballots not counted” is synonymous with Maine’s statutory definition of “exhausted ballots.”

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<sup>5</sup> See 29-250-535 Code Me. R. § 4.2(A).

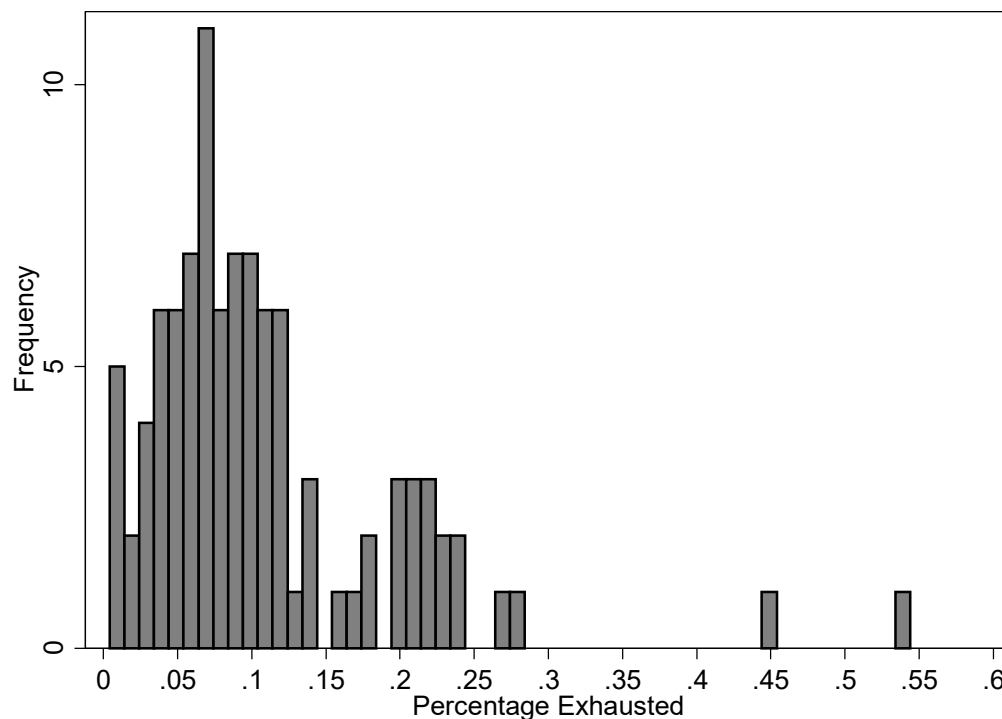
<sup>6</sup> Under Maine regulations, an undervote occurs only if two or more rankings are skipped. See 29-250-535 Code Me. R. § 4.2(B)(2)–(3).

Previous research has shown that high numbers of exhausted ballots are a pervasive phenomenon in RCV elections.<sup>7</sup>

To supplement these results and provide some additional empirical evidence concerning the prevalence of exhausted votes, I conducted a statistical analysis of a data set of 98 RCV general elections held in the U.S. from 2006 to 2019. These elections are restricted to those conducted under RCV rules and required more than a single round to determine the winner. Thus, they exclude those for which a candidate received a majority on the first round of balloting.

Figure 1 below provides the frequency distribution of the percentage of ballots that were exhausted during the RCV counting process for the 98 elections in the first dataset.<sup>8</sup> Clearly, large numbers of exhausted ballots are the norm. The most typical RCV election (a circumstance that arose more than ten times in the dataset) is one where 8% of the ballots are not counted in the final round. On average, 10.8% of votes cast in an RCV election are considered exhausted. But a large number of elections had ballot exhaustion rates of 20% and higher. Indeed, 15 of the 98 RCV elections resulted in more than 20% of cast ballots being exhausted.

how many elections total? 98 is obviously a subset that doesn't include elections settled in the first round



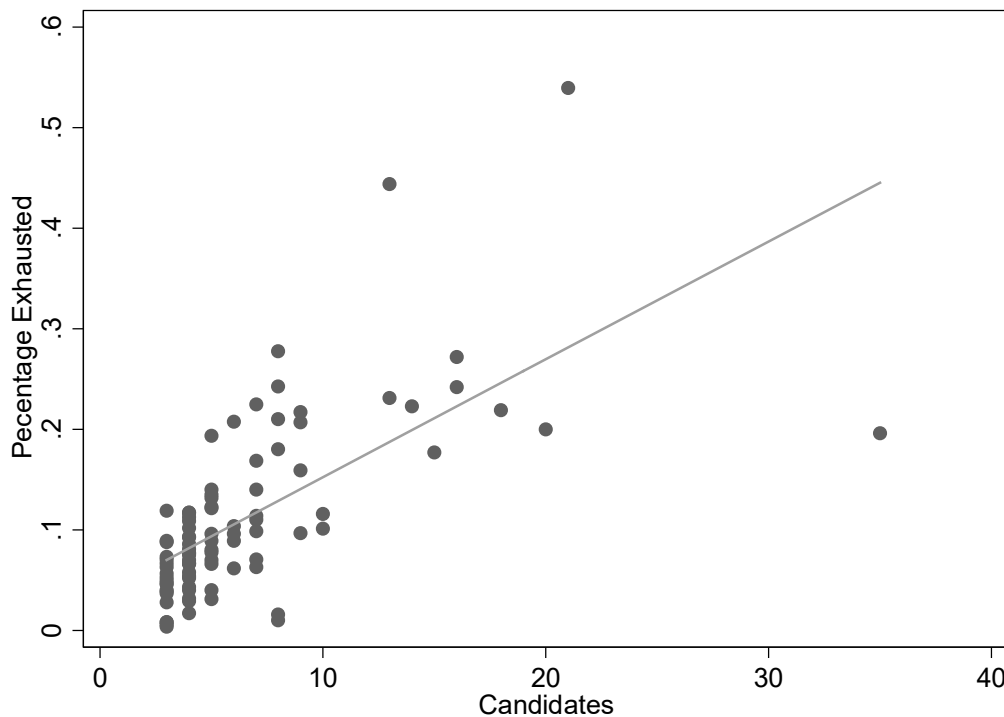
**Figure 1: Exhausted Ballots for 98 RCV Elections**

The number of exhausted votes across these elections depends on several factors, the most important of which is the number of candidates in the election. Figure 2 shows the relationship

<sup>7</sup> See Craig M. Burnett and Vladimir Kogan, “Ballot (and Voter) ‘Exhaustion’ Under Instant Runoff: an Examination of Four Ranked-Choice Elections,” *Electoral Studies* 37, 41–49 (2015); Francis Neely and Jason McDaniel, “Overvoting and the Equality of Voice Under Instant-Runoff Voting in San Francisco,” *California Journal of Politics and Policy* 7(4) (2015).

<sup>8</sup> As noted above, exhausted ballots exclude the over- and undervotes from the first round.

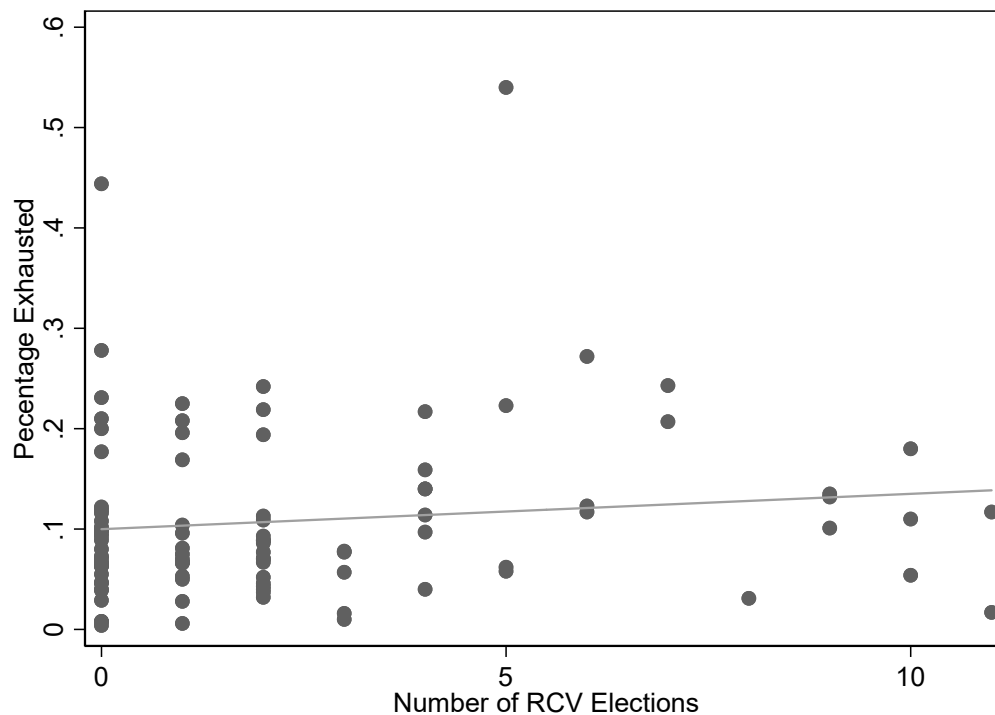
between ballot exhaustion and the number of candidates where the line shows the best linear relationship.



**Figure 2: Exhausted Ballots and the Number of Candidates**

There is a strong relationship between ballot exhaustion and the number of candidates. And, as demonstrated by Figure 2, the rate of ballot exhaustion only increases with the number of candidates in an election. This is due to the fact that voters rarely rank all of the available candidates, and they rank a lower percentage of candidates when there are large numbers of them. If all voters ranked all candidates, there would be no exhausted votes. If they ranked a constant proportion of candidates, the rate of exhaustion would not increase with the number of candidates running. Accordingly, the increasing rate of ballot exhaustion is consistent with the idea that ranking large numbers of candidates is confusing for most voters and that confusion only increases as the number of candidates increases.

A common defense by RCV advocates is that voter confusion and the effects of cognitive constraints will diminish over time as voters get used to the system. That conjecture can also be tested on these data. Figure 3 plots the rate of exhausted ballots against the number of times that the jurisdiction has used RCV.



**Figure 3: Ballot Exhaustion Over Time**

Contrary to the advocacy, there is no empirical evidence that ballot exhaustion rates decline with more experience. Indeed, despite repeated practice with RCV elections, Figure 3 demonstrates that high ballot exhaustion rates do not improve over time. Thus suggesting that the voter confusion discussed above is not based merely on the introduction of a new system but is due to problems inherent in the RCV election system.

To demonstrate the robustness of the bivariate relationships in Figures 2 and 3, I estimate a multivariate regression of the ballot exhaustion rate on the number of candidates and the number of previous RCV elections. I add a few additional control variables such as an indicator for whether it was a mayoral election (the highest profile elections in the dataset) and the natural log of the number of votes (also to capture higher profile elections).<sup>9</sup>

| Table 1: Correlates of Ballot Exhaustion |             |
|--|-------------|
| Variable                                 | Coefficient |
| Number of Candidates                     | 0.013***    |
|  | (0.002)     |
| Number of RCV Elections                  | 0.000       |
|  | (0.002)     |

<sup>9</sup> See Francis Neely and Jason McDaniel, “Overvoting and the Equality of Voice Under Instant-Runoff Voting in San Francisco.” *California Journal of Politics and Policy* 7(4) (2015).

|  |           |
|--|-----------|
| Mayoral Race   | -0.072*** |
|  | (0.021)   |
| Ln(votes)  | 0.011**   |
|  | (0.005)   |
| Constant   | -0.071    |
|  | (0.046)   |
| N  | 93        |
| R Squared  | 0.529     |
| Standard errors clustered by jurisdiction in parentheses |           |

There is a strong relationship between exhausted ballots and the number of candidates running. Each additional candidate in an RCV election adds a 1.3 percentage point increase in exhausted ballots. In contrast, the effect of the number of elections is zero to three decimal places. Thus, RCV advocates are incorrect to claim that RCV performs better over time. Instead, the evidence shows that an increase in election candidates has a direct correlation to exhausted ballots in that election, and this problem remains over time.<sup>10</sup>

## B. Fully Participating Ballots

Data on the individual vote records in Maine RCV elections can allow for a closer look at the behavior of voters in RCV elections.<sup>11</sup> These data contain a record of every vote cast. Under Maine's balloting procedures, voters are asked to provide the candidate that they place in ranks 1 through  $n+1$ , where  $n$  is the number of candidates.<sup>12</sup> A voter may undervote at any rank by leaving that column blank. A voter may overvote by identifying two candidates for a single rank. Nothing precludes a voter from ranking the same candidate at two or more positions. Figure 4 provides an illustration of what the Maine ballot data looks like.

|   | A                | B         | C                    | D                                    | E                                    | F                                    | G                                    | H                               |
|---|------------------|-----------|----------------------|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|---------------------------------|
| 1 | Cast Vote Record | Precinct  | Ballot Style         | Rep. to Congress 1st Choice District | Rep. to Congress 2nd Choice District | Rep. to Congress 3rd Choice District | Rep. to Congress 4th Choice District | Rep. to Congress 5th Choice Dis |
| 2 |                  | 1 Fayette | CAN Ballot Style 130 | REP Poliquin, Bruce (5931)           | REP Poliquin, Bruce                  | REP Poliquin, Bruce                  | undervote                            | undervote                       |
| 3 |                  | 2 Fayette | CAN Ballot Style 130 | REP Poliquin, Bruce (5931)           | undervote                            | undervote                            | undervote                            | undervote                       |
| 4 |                  | 3 Fayette | CAN Ballot Style 130 | DEM Golden, Jared F. (5471)          | Bond, Tiffany L.                     | undervote                            | undervote                            | undervote                       |
| 5 |                  | 4 Fayette | CAN Ballot Style 130 | REP Poliquin, Bruce (5931)           | DEM Golden, Jared F.                 | Bond, Tiffany L.                     | DEM Golden, Jared F.                 | Hoar, William R.S.              |
| 6 |                  | 6 Fayette | CAN Ballot Style 130 | REP Poliquin, Bruce (5931)           | undervote                            | undervote                            | undervote                            | undervote                       |

**Figure 4: Example of Cast Ballots in Maine 2nd Congressional District Election**

The votes in Figure 4 are simply the first five rows of the data, but one can see the large number of anomalies. First, none of these voters successfully ranked all four candidates. Voter 1 voted for Bruce Poliquin in ranks 1 through 3 and then left 4 and 5 blank. Voters 2 and 6 only voted for Poliquin and then left the rest blank. Interestingly, voter 4 chose Jared Golden as her second and fourth ranked candidate. Importantly, none of these voters' ballots was exhausted as each

<sup>10</sup> That mayoral races have lower rates of ballot exhaustion is consistent with voters ranking a higher proportion of candidates in high profile elections, but larger electorates appear to produce more exhausted ballots.

<sup>11</sup> These data are available from the Maine Secretary of State, Bureau of Corporations, Elections, and Commissions, <https://www.maine.gov/sos/cec/elec/results/results18.html#Nov6> (last visited July 22, 2020).

<sup>12</sup> The additional slot is included for write-in candidates.

so there's no burden!

ranked one of the candidates that made it to the final round (Poliquin and Golden). But all of the ballots except that of voter 4 could have been exhausted if the balloting had turned out differently. For that reason, the number of exhausted votes generally understates the magnitude of the problems voters have in casting RCV ballots.

To empirically quantify the magnitude of this issue, I define a *fully participating voter* in an RCV election as a voter who ranks at least  $n-1$  distinct candidates in an  $n$ -candidate election and does not overvote at any of the ranks.<sup>13</sup> Full participation ensures that the vote cannot be exhausted and therefore is certain to be counted in the final tally, regardless of how the tabulation of votes plays out. I will refer to ballots that are not fully participating as *truncated*.

Aside from reducing the likelihood that a voter's ballot is counted in each round, truncated ballots also negatively impact the outcomes of RCV elections. Recently, D. Marc Kilgour, Jean-Charles Grégoire, and Angèle M. Foley conducted a simulation study of the consequences of truncated ballots in RCV elections.<sup>14</sup> The authors found that ballot truncation is very common and hard to rationalize. But more importantly, the authors demonstrated how some of the supposed salutary properties of RCV fail when voters do not fully participate. First, they find that even small amounts of truncation can alter the identity of the election winner, especially in elections with more than three candidates. Often these distortions disadvantage and result in outcomes that are contrary to the will of the voter whose ballot is truncated.

Second, Kilgour and his colleagues evaluate the quality of the election by assessing whether the election produces a *Condorcet winner*. A Condorcet winner is a candidate that is preferred by a majority of voters in every pairwise comparison with another candidate. Electing such a candidate when one exists is therefore a crucial desiderata for evaluating electoral systems. Yet Kilgour and his colleagues found that ballot truncation reduces the likelihood that the election outcome will produce the Condorcet winner.<sup>15</sup> In other words, Kilgour found that the winner of the RCV election may have been less successful if she had faced another candidate in the final round of voting – a direct contradiction of advocates' claims that no candidate can win a RCV election without majority support.

Finally, the authors noted that the effects of truncation are unpredictable, even for voting theorists such as themselves:

We regret that we cannot give any intuition that might “explain” our simulation results. Compared to other election methods, competitive ranked-choice elections are opaque, in that it is very difficult to predict whether and how small changes in votes will affect the winner. Indeed, that is the very reason that a simulation is necessary to answer our question about the effects of ballot truncation. (p. 216).

<sup>13</sup> Ranking the last candidate is unnecessary since there can be at most  $n-1$  rounds of voting. Similarly, using the last ballot slot is also superfluous unless the voter casts a write-in vote in one of the earlier ranks. That 7.4% of the voters placed a candidate in rank 5 demonstrates a fundamental lack of understanding of how the system works.

<sup>14</sup> D. Marc Kilgour, Jean-Charles Grégoire, and Angèle M. Foley, “The Prevalence and Consequences of Ballot Truncation in Ranked-choice Elections” 184 *Public Choice* 197–218 (2020).

<sup>15</sup> In other words, suppose that a majority of voters prefers A to B and a majority prefers B to C; the authors found that ballot truncation reduces the likelihood that A wins an RCV election.

That is, even with the benefit of their research, Kilgour and his colleagues found that the large numbers of truncated ballots in RCV election ballots lack any strategic rationale.

Using the cast ballot data described above, I can calculate the percentage of Maine's Second Congressional District general election voters in 2018 who met this standard for full participation. Only 36% of voters in this election satisfied the most stringent version of this criteria by using ballot ranks 1-3 to rank three distinct candidates. This low level of voter participation is due to the fact that 60.6% of voters did not use at least one of the first three ranks and another 3.5% repeated the same candidate more than once in the first three ranks. Under Maine voting regulations, a voter may skip a single rank without exhausting her ballot. Therefore, a ballot with up to two non-consecutive skips may also be considered fully participating. But only 37.7% of Maine voters met the less stringent criteria by filling out three rounds of voting with non-consecutive skips, demonstrating that approximately two-thirds of Maine voters in the 2nd CD election were at risk of not having their ballot counted.

how many of these 36% and 60.6% voted for the winner?

at risk, but did their votes count???

As pointed out by Kilgour and his colleagues, there is no strategic reason for a voter to undervote in an RCV election. Instead, the large number of ballots that fail to rank three candidates in rounds 1-3 demonstrates that the problem is inherent to RCV elections. For example, Maine's rules regarding ballot skips are a source of confusion for voters. In addition to the data noted above, 44 Maine voters had their ballots invalidated because they skipped two ranks between an eliminated candidate and an otherwise valid vote for a continuing candidate. Another 307 votes were discarded because the highest ranked candidate appeared in rank 3 or lower on the voter's ballot.

Interestingly, of the 6018 voters who undervoted in the first round of voting, only 5711 marked zero candidates. Thus, the 307 voters whose highest ranked candidate appeared in rank 3 or lower intended to vote in that race but miscast their ballot. While some of these cases may reflect an expressive vote against a candidate by simply ranking him or her last, that pattern accounts for the minority of these cases. Just 135 voters used only the fifth ballot position (including those that cast an overvote in that rank).

Indeed, as shown in Table 2 below, a significant number of Maine voters who participated in the 2nd CD election cast votes that similarly defy any clear strategic or logical reason. This wide variety of incorrect, and even ineffective, balloting demonstrates that ballot-exhaustion, and the risk of ballot-exhaustion due to truncated votes, cannot be attributed to voter choice.

| Table 2: Non-Strategic Voter Categories   |                   |                          |
|---|-------------------|--------------------------|
| Category of Voter   | Number of Ballots | Percent of Total Ballots |
| Skipped at least one round of voting between candidates ( <i>e.g.</i> , Candidate A, blank, Candidate B)      | 11,569            | 3.9%                     |
| Filled out at least one round but left the first round blank ( <i>e.g.</i> , blank, Candidate A, Candidate B) | 810               | .3%                      |



|  |              |             |
|--|--------------|-------------|
| Ranked the same candidate in non-consecutive rounds ( <i>e.g.</i> , Candidate A, Candidate B, Candidate A)   | 1842         | .6%         |
| Ranked one candidate consecutively and also ranked at least one other candidate on the ballot ( <i>e.g.</i> , Candidate A, Candidate A, Candidate B) | 824          | .3%         |
| Ranked (i) only one candidate (ii) more than once but (iii) left at least one round blank ( <i>e.g.</i> , Candidate A, Candidate A, blank)           | 1346         | .5%         |
| Overvotes ( <i>e.g.</i> more than one candidate at the same ranking)   | 1994         | .7%         |
| <b>Total (Excluding Duplicates Between Categories):</b>  | <b>17352</b> | <b>5.9%</b> |

To show that the results from Maine's 2nd CD election are not anomalous, I repeat the exercise for the 2018 Democratic Gubernatorial primary election.<sup>16</sup> In that election, there were seven declared candidates so the ballot allowed for eight ranks. For the ballot data, I calculate that only 35% of the voters fully participated by ranking six distinct candidates (allowing for single skips). Not only did a large number fail to rank six candidates, I also calculate only 50% of voters ranked at least four distinct candidates. While that seems better than the performance in the 2nd CD election, it resulted in a situation in the second round of counting where the margin between the 1st and 2nd candidate and the margin between the 3rd and 4th candidate was less than the number of exhausted votes. Had more voters fully participated in the 2018 Gubernatorial primary, the outcomes could have easily been influenced.<sup>17</sup>

Similarly, I repeat the exercise for the 2018 Democratic 2nd Congressional District primary election. In that race, there were four candidates. When accounting for single skips, I find that only 47% of the voters fully participated in the election.

Thus, in each RCV election held in Maine for which I have cast ballot data, less than half of participating voters cast a ballot that ensures their vote would be counted. To demonstrate this point more fully, Table 3 provides a summary calculation of (1) the number of ballots that were not fully participating in the three Maine RCV elections and thus risked exhaustion, (2) the number of ballots that were actually exhausted in each of the three Maine RCV elections, and (3) the number of ballots that were not counted in the 2018 Maine elections.

| <b>Table 3: Exhaustion, Votes Not Counted, and Lack of Full Participation</b> |                             |                                   |                                   |
|---|-----------------------------|-----------------------------------|-----------------------------------|
|   | <b>2018 2nd CD Election</b> | <b>2018 Congressional Primary</b> | <b>2018 Gubernatorial Primary</b> |
|   |                             |                                   |                                   |

<sup>16</sup> I could not analyze voter choice for the 2018 Senate election or the 2018 Congressional primaries in the First Congressional District or the Republican primary in the Second Congressional District because Maine does not report cast ballot data for RCV elections that resolve in the first round.

<sup>17</sup> Similar to the 2nd CD election, a large number of voters (6.6%) used the superfluous eighth rank.



|  |         |        |        |
|--|---------|--------|--------|
| Absolute Number of Ballots Not Reflecting Full Participation | 184,276 | 26,715 | 86,166 |
| Percent of Ballots Not Reflecting Full Participation         | 62.3%   | 52.5%  | 65.1%  |
| Absolute Number of Exhausted Ballots                         | 8,253   | 1,747  | 8,714  |
| Percent of Total Ballots Exhausted                           | 2.7%    | 3.4%   | 6.6%   |
| Absolute Number of Ballots Not Counted                       | 14,706  | 7,381  | 15,000 |
| Percent of Total Ballots Not Counted                         | 10.5%   | 14.5%  | 11.3%  |

### **C. Comparing Participation in Maine's RCV with Plurality and Runoff Systems**

To demonstrate the risk of disenfranchisement in Maine, it is useful to compare the low voter participation rates in RCV elections with their counterparts in plurality and runoff elections.

In a plurality election, full voter participation is defined as casting one ballot for the race in question.<sup>18</sup> Therefore, the full participation rate is simply the percentage of non-blank ballots. Consequently, the full voter participation rate for the non-RCV 2018 Maine Gubernatorial race was 97.3%, while the full voter participation rates for contested state senate elections that year ranged from 95.5% to 98.2% with an average of 97.3%. That is, in contrast to the 2nd CD election, the average rate of fully participating ballots in the 2018 Maine plurality elections was 97.3%

The comparison to runoff elections is not much better. In a traditional majority runoff election, multiple candidates compete in round 1 and then the top two candidates compete in a runoff election held at a later date. Such elections are held in various locations in the U.S. (especially in the southern states) and is the system France uses to elect its president.

As an initial matter, one concern about majority runoffs is that turnout in the second round may fall. This has often been the case when majority runoffs have been used in U.S. primary elections, but in many cases the drop has been less than the number of exhausted ballots typically

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<sup>18</sup> Here I am setting aside the issue that a primary election typically precedes a plurality election so that one might define full participation as casting a ballot in both the primary and general election. But I have also set aside that the Maine RCV general elections are preceded by a primary election.

found in an RCV election. As explained above, the average rate of exhausted ballots in 98 RCV elections that proceeded past the first round of voting is 10.8% of the votes cast.

To take a closer look at this issue, I examined data from U.S. Gubernatorial and Senate primary runoff elections in the United States from 1990 to 2018.<sup>19</sup> The unbracketed numbers of Table 4 report the percentage of those elections where the turnout dropoff was less than 10.8%, which is the average rate of ballot exhaustion in the 98 RCV elections I reviewed.

| <b>Table 4: Dropoff Rates in Plurality Runoff Elections</b> |   |                                  |
|---|---|----------------------------------|
|   | Percentage with Dropoff less than 10.8% | Percentage with Turnout Increase |
| Governors   | 34.8%<br>{42.9%}                        | 4.3%<br>{7.4%}                   |
| Senate  | 6.7%<br>{12.5%}                         | 6.7%<br>{12.5%}                  |

There are many reasons for low voter participation in a runoff primary election, so the fact that so many runoff elections experienced lower dropoff than 10.8% (the equivalent of a “dropoff” in RCV elections following the first round of voting), and certain runoff elections even had *increased* participation is remarkable.

One of the major reasons for lower participation in the runoff is many of the primaries involve nominating candidates who are very likely to lose the general election. A lack of enthusiasm to turn out to choose the “sacrificial lamb” may drive down voter turnout. Accordingly, the bracketed proportion in Table 4 shows the numbers for the primaries where the winner went on to be victorious in the general election. As the table shows, big dropoffs in voter turnout are much less likely in those elections.

A second issue with majority runoff primary elections is that the second round typically occurs on an irregular date and involves a single election race (rather than multiple races like a first-round primary or general election). There are, however, many majority runoff elections where the second round occurs on the Federal Election Day, which experience a boost in voter turnout due to the alignment of the runoff election with other matters of voter interest. These include the Louisiana “jungle” primary system and the “Top 2” primary systems used in California and Washington State.<sup>20</sup> For Louisiana every single gubernatorial runoff from 1990 to 2019 had a *boost* in turnout, including a 12% increase in voter turnout in 2019. In Louisiana, one of the three Senate runoffs had a voter turnout increase of 38%, one had a decline of less than 1%, while the other had 13% drop. In the latest California and Washington State Congressional elections, *every single race* had higher participation in the second round than in the first. In California, the average turnout increase was 92.5%, while the lowest voter turnout increase was 53.2%. In Washington, district level turnout increased at least 58% in every district, with an

<sup>19</sup> These exclude those from Louisiana for reasons discussed below.

<sup>20</sup> In the “Top 2” primary system, all candidates from all parties as well as independents appear on the primary ballot. Each voter casts one vote in the primary, and the two leading vote getters move to the general election. The “jungle” primary differs in that there is no second round if a candidate wins a majority of the vote in the primary.

average increase of 78%. Clearly, these elections performed much better than RCV in producing majority winners and having good second-round voter participation.

While majority runoff elections compare favorably to RCV elections with respect to participation in the final round, the comparisons in terms of fully participating ballots are not even close. In a majority runoff, full participation requires casting a ballot in both rounds of the election.

Unfortunately, with the available aggregate data, we cannot directly observe whether an individual voter voted in each round. But if we assume that a voter who participates in the low turnout round is likely to participate in the high turnout round, then we can estimate the full participation rates for the majority runoff elections discussed in this section. The estimate is simply the ratio of the turnout from the low turnout round to that of the high turnout round. So for most of the primaries, the full participation rate will be runoff turnout divided by first round turnout. For the “top 2” primaries, it will be primary turnout (the low turnout election) divided by general election turnout (the high turnout election).

Table 5 reports statistics on the full participation rates for various types of the majority runoff elections as well as the plurality Maine state senate elections. One can clearly see that the Maine RCV elections have full participation rates far below the averages for the other type of elections. Indeed, the full participation rates for Maine RCV elections come out near the bottom of the 126 elections reflected in the table.<sup>21</sup> Only one election scores clearly lower than the 2018 Maine Gubernatorial primary: the 2006 Mississippi Democratic Senate primary, where the winner ultimately lost the general election by almost 30 points.

| <b>Table 5: Full Participation Rates Across Election Types</b> |        |     |     |         |
|--|--------|-----|-----|---------|
|  | Number | Min | Max | Average |
| Maine State Senate   | 33     | 96% | 98% | 97%     |
| Governors Primaries  | 23     | 42% | 98% | 81%     |
| Senate Primaries   | 30     | 29% | 89% | 62%     |
| Louisiana Jungle   | 8      | 72% | 99% | 91%     |
| California Top 2 <sup>22</sup>                                 | 53     | 32% | 53% | 65%     |

<sup>21</sup> One potential objection to the analysis reported in Table 5 is the assumption that all voters who voted in the low turnout round vote in the higher turnout round. That assumption could be easily relaxed. If I assume that proportion  $p$  of the low round voters also voted in the high round, the full participation rate for the majority runoffs would be  $p$  times the reported value in Table 5. Therefore, so long as  $p > .64$ , the RCV elections will still fall below the averages of all of the other types of elections. But  $p$  is certainly much larger than that. Based on the 2018 Cooperative Congressional Election Survey, 93% of the respondents who reported voting in a primary had already voted or “definitely” intended to vote in the general election.

<sup>22</sup> Comparisons of full participation in IRV and Top 2 elections are not exact as the turnout in the decisive round of voting always increases for the Top 2 elections.

|                             |    |     |     |     |
|-----------------------------|----|-----|-----|-----|
| Washington Top 2            | 10 | 53% | 63% | 56% |
| Maine 2nd CD Election       |    |     |     | 38% |
| Maine Congressional Primary |    |     |     | 47% |
| Maine Gubernatorial Primary |    |     |     | 35% |

In summary, the evidence of this section shows that RCV compares quite unfavorably to majority runoff voting in terms of voter participation and exhaustion. Contrary to the advocacy, the falloff in participation for non-RCV elections is often less than the 10.8% average of ballots that are exhausted in RCV elections. And RCV voters are much less likely to fully participate by ensuring that their ballot will count at all stages of tabulation.

The reasons for this discrepancy are clear. Voters in RCV elections cast ballots in a state of great uncertainty as to which candidate comparisons will be used in later rounds of voting. This leads RCV voters to undervote, leaving their ballots open to the risk of exhaustion in later rounds of voting. On the other hand, majority runoff voters know with certainty which candidates are competing in the runoff. Of course, such voters may choose not to participate in the runoff, but that reflects a much more deliberate choice than the RCV voter who cannot predict the necessity of ranking a certain candidate.

#### **D. Who Truncates Their Ballot and Risks Exhaustion?**

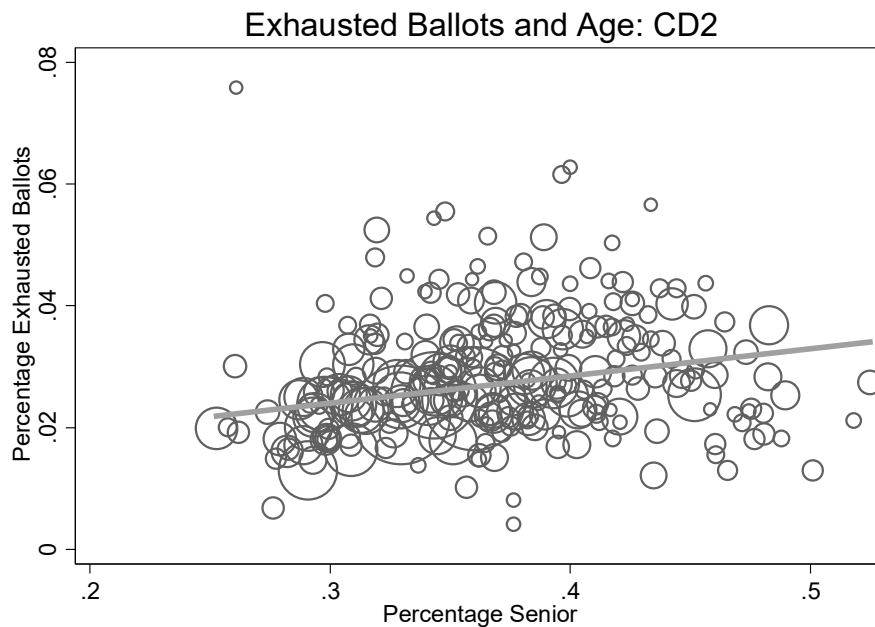
Another crucial question for evaluating RCV's propensity to disenfranchise voters by preventing full participation is whether undervoting is a deliberate choice of voters or a reflection of voter confusion related to the complexity of the ballot, the procedures for tabulation, and other characteristics that are inherent to RCV elections.

As noted above, there is no strategic reason for an undervote. We can get some purchase on why a voter would decide to undervote, even if there is no strategic reasons, by identifying what sorts of voters cast less than fully participating ballots that could result in exhausted ballots. Ideally, we would have demographic and other data on each voter that we could match to her ballot. However, ballot secrecy precludes that. So as a second best, I aggregate voting data up to the town level and match it with the demographic data of the town's voters, which I obtained from the Maine voter file.

I focus here on two characteristics that are strongly correlated with RCV undervoting—age and education—as other literature demonstrates that older and less-educated voters tend to undervote in RCV elections or have difficulty understanding the ballot.<sup>23</sup> Figure 5 shows the relationship

<sup>23</sup> André Blais, Maxime Héroux-Legault, Laura Stephenson, William Cross, and Elisabeth Gidengil, "Assessing the Psychological and Mechanical Impact of Electoral Rules: A Quasi-Experiment," 31 *Electoral Studies* 829–37 (2012); Francis Neely, Corey Cook, and Lisel Blash, "An Assessment of Ranked-Choice Voting in the San Francisco 2004 Election Final Report May 2005," Public Research Institute, San. Fran. State Univ. (2006), [http://archive.fairvote.org/sfrev/SFSU-PRI\\_RCV\\_final\\_report\\_June\\_30.pdf](http://archive.fairvote.org/sfrev/SFSU-PRI_RCV_final_report_June_30.pdf); Jason McDaniel, "Writing the Rules to

between ballot exhaustion and the percentage of voters over 65 for 263 towns in the 2nd CD election that cast at least 200 votes.<sup>24</sup> In Figure 5, the area of the circle is proportional to the population of the town. The best fit line weighs larger towns more heavily than smaller towns.<sup>25</sup>



**Figure 5: Exhausted Ballots and Age**

Figure 5 demonstrates that there is a substantial empirical relationship between the proportion of exhausted ballots and the percentage of elderly voters on the town's voter roll. The expected difference between the town with the lowest proportion of seniors to the one with the most corresponds to a 1.2 percentage point increase in ballot exhaustion.

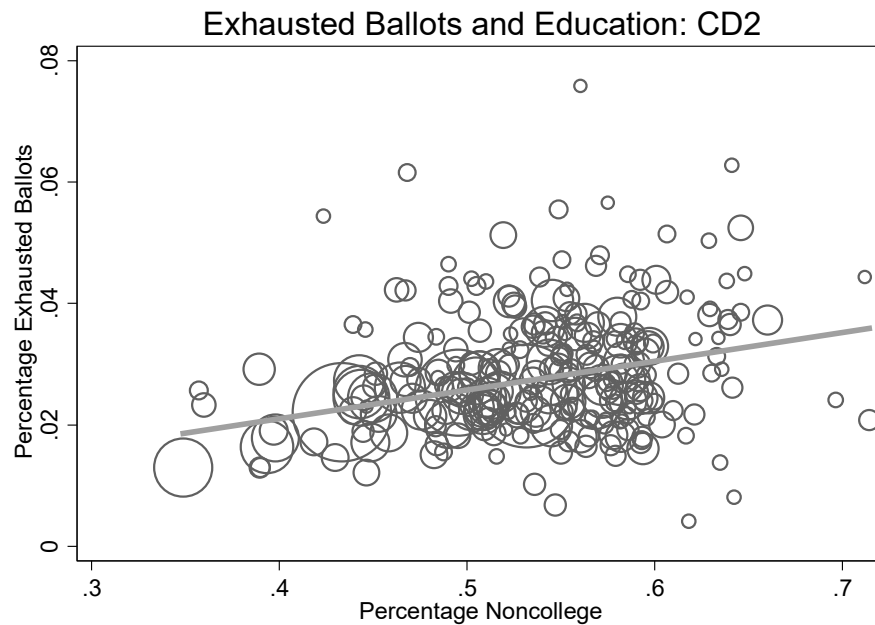
Figure 6 shows the relationship between exhausted ballots and the percentage of voters without a college degree. As above, the area of the circle identified in Figure 6 is proportional to the population of the town, and the best fit line weighs larger towns more heavily than smaller towns.

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Rank the Candidates: Examining the Impact of Instant-Runoff Voting on Racial Group Turnout in San Francisco Mayoral Elections,” 38 *Journal of Urban Affairs* 387–408 (2016); Todd Donovan, Caroline Tolbert, and Kellen Gracey, “Self-Reported Understanding of Ranked-Choice Voting,” 78 *Social Science Quarterly* 973–79 (2019).

<sup>24</sup> The criterion that a town cast 200 votes is designed to ensure that we have less noisy estimates of the undervoting rate and of the demographic composition of the voters. None of the conclusions would be altered if the threshold were dropped to 50 votes.

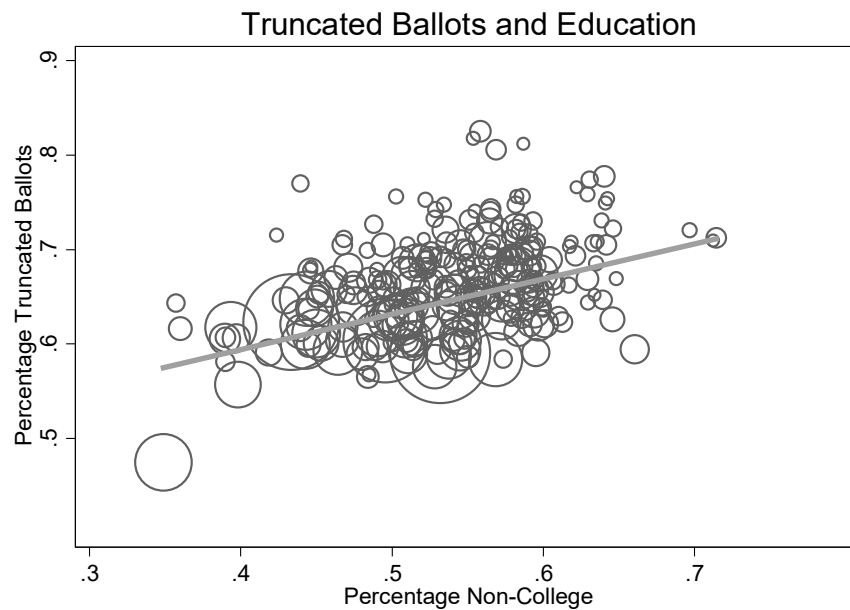
<sup>25</sup> Larger towns provide more information about the behavior of individual voters and less random variation. Thus, it is generally considered a best practice to weigh observations based on population.



**Figure 6: Exhausted Ballots and Education**

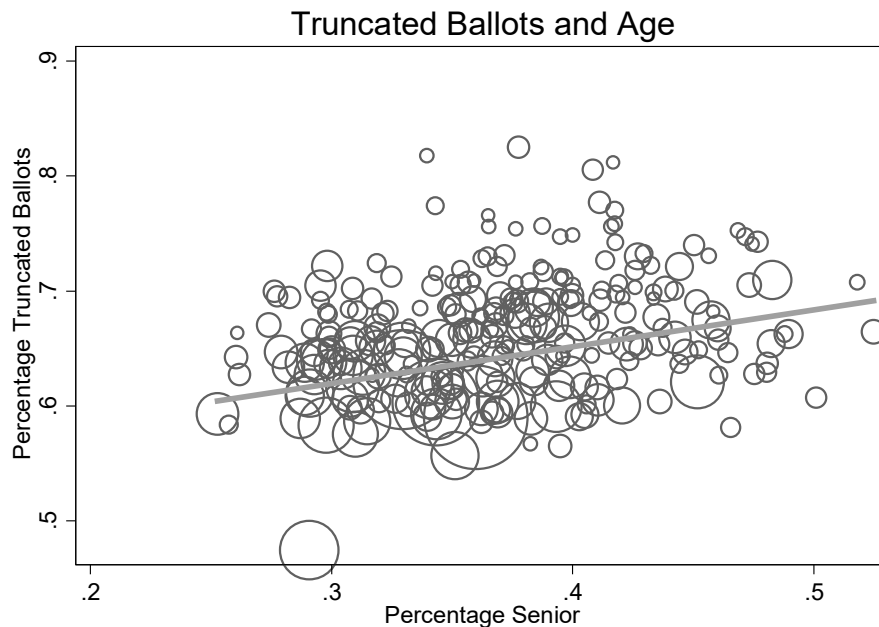
Here too we find a strong empirical relationship. In expectation, the least-educated town produces 1.7 percentage points more exhausted ballots than the most-educated town.

The relationships between voter age and voter education and undervotes is even stronger if we look at the percentages of truncated ballots (Figures 7 and 8).



**Figure 7: Truncated Ballots and Education**

Figure 7, which shows the bivariate relations between education and ballot truncation, shows that in the least-educated town truncates ballots at a 14 percentage point greater rate than the most-educated town.



**Figure 8: Truncated Ballots and Age**

Figure 8, which shows the bivariate relations between age and ballot truncation, shows that the town with the most senior voters truncates ballots at an almost 9 percentage greater rate than the town with the least senior voters. To examine these relationships further, I conduct a multivariate regression analysis of exhausted ballots as well as truncated ballots and total undervoting, including skipping the election entirely. I also control for the percentage of a town's voters that have no party affiliation since they are more likely to have supported one of the independent candidates leading to exhausted ballots. The results are reported in Table 6.

| <b>Table 6: Maine Second Congressional District General Election 2018</b> |                     |             |                |
|---|---------------------|-------------|----------------|
|   | % Truncated Ballots | % Exhausted | All Undervotes |
| % Non-College   | 0.364***            | 0.038***    | 0.069***       |
|   | (0.061)             | (0.006)     | (0.013)        |
| % Over 65   | 0.291***            | 0.051***    | 0.088***       |
|   | (0.077)             | (0.012)     | (0.022)        |
| % Unaffiliated voters   | -0.016              | 0.036**     | 0.048          |
|   | (0.085)             | (0.013)     | (0.029)        |
| Intercept   | 0.351***            | -0.022      | -0.034         |
|   | (0.036)             | (0.005)     | (0.009)        |
| N   | 263                 | 263         | 263            |



|   |       |       |       |
|---|-------|-------|-------|
| R Squared   | 0.335 | 0.249 | 0.206 |
| <b>Standard errors clustered by county in parentheses</b> |       |       |       |

Note that older and less-educated towns show higher levels of truncated and exhausted ballots as well as total undervotes. To make these results more concrete, I will focus on the impact of increasing the percentage of seniors and non-college voters by 10 percentage points. A 10 percentage point increase in seniors increases truncated ballots by 2.9 percentage points, exhausted ballots by .5 percentage points, and all undervoting by .9 percentage points. Similarly, a 10 percentage point increase in the non-college population increases truncation by 3.6 percentage points, exhausted ballots by .4 percentage points, and all undervoting by .7 percentage points.

The presence of unaffiliated voters is associated only with higher levels of exhausted ballots, but not with truncation or total undervoting.

The analysis can be replicated for the 2018 Gubernatorial primary. But because the primary was open only to Democratic voters, I use the percentage of Democratic voters who are over 65 or lack a college degree. I also conducted separate analyses for all truncated ballots and for those voters who ranked fewer than 4 candidates. These results are reported in Table 7.

| <b>Table 7: Maine Democratic Gubernatorial Primary 2018</b> |             |                |                 |                |
|---|-------------|----------------|-----------------|----------------|
|   | % Truncated | % Fewer than 4 | Exhausted Votes | All Undervotes |
| % Non-College   | -0.246***   | 0.240***       | 0.125***        | 0.238***       |
|   | (0.067)     | (0.088)        | (0.043)         | (0.032)        |
| % Over 65   | 0.223***    | 0.296***       | -0.013          | 0.063          |
|   | (0.042)     | (0.051)        | (0.078)         | (0.080)        |
| Intercept   | 0.678***    | 0.282***       | 0.015           | -0.023         |
|   | (0.035)     | (0.040)        | (0.043)         | (0.038)        |
| N   | 157         | 157            | 157             | 157            |
| R Squared   | 0.260       | 0.272          | 0.067           | 0.187          |
| <b>Standard errors clustered by county in parentheses</b>   |             |                |                 |                |

These results also show the correlation between voter age, education, and undervoting. Towns with high numbers of non-college Democratic voters tend to have fewer ballots that rank six candidates, and more that rank fewer than four candidates. Those towns have more exhausted votes and higher rates of total undervoting. A 10 percentage point increase in the proportion of non-college voters increases the rate of exhausted votes by 1.3 percentage points and total undervoting by 2.4 percentage points.

Towns where Democratic voters skew older also have more truncated ballots and more ballots ranking fewer than four candidates. A ten percentage point increase in seniors leads to a 2.2 percentage point increase in the number of truncated ballots and a 3 percentage point increase in the number of ballots failing to rank at least four candidates.



Similarly, the analysis can be replicated for the 2018 Congressional primary as reported in Table 8.<sup>26</sup> These results are very consistent with those for the general elections in that there are positive correlations between the percentage of non-college and senior voters. But because the sample is much noisier due to lower turnout in the primary, some of the coefficients do not reach statistical significance.

| <b>Table 8: Maine Second Congressional District Democratic Primary 2018</b> |                     |             |                |
|---|---------------------|-------------|----------------|
|   | % Truncated Ballots | % Exhausted | All Undervotes |
| % Non-College   | 0.274***            | 0.032       | 0.360***       |
|   | (0.086)             | (0.053)     | (0.068)        |
| % Over 65   | 0.142***            | 0.053*      | 0.089          |
|   | (0.041)             | (0.040)     | (0.057)        |
| Intercept   | 0.344***            | -0.009      | -0.071         |
|   | (0.033)             | (0.025)     | (0.042)        |
| N   | 214                 | 214         | 214            |
| R Squared   | 0.131               | 0.045       | 0.262          |
| <b>Standard errors clustered by county in parentheses</b>                   |                     |             |                |

The analysis from the primary election data, however, should not be compared directly to that of general elections due to the nature of primaries and the individuals who choose to vote in them. On the whole, primary voters tend to be much more interested and engaged in politics, than general election voters.<sup>27</sup> So it is remarkable that even among the most politically engaged segments of the electorate, we are seeing high levels of vote truncation and exhaustion and that it is correlated with the age and education profiles of the town. Moreover, in primary elections, there are no partisan reasons for truncation (e.g. a Republican who does not want to rank a Democrat) as all candidates are in the same party.

So, in my view, the fact that even primary voters register high levels of undervoting that is correlated with voter age and education, is further proof of the dangers inherent in RCV elections.

## **II. LOW FULL-PARTICIPATION RATES IN MAINE CANNOT BE EXPLAINED BY VOTER CHOICE OR EXPRESSION**

The numbers detailed above demonstrate that RCV elections suffer from fatal internal flaws. Not only do the high numbers of exhausted ballots fail to decrease over time, those risks significantly *increase* for voters over the age of 65 and for voters who did not graduate from

<sup>26</sup> Because primary turnout is lower, I included all towns that had 75 votes or more.

<sup>27</sup> See John Sides, Chris Tausanovitch, Lynn Va vreck, and Christopher Warshaw, “On the representativeness of primary electorates,” 50 *British Journal of Political Science* 677–85 (2020).

college. This is particularly troubling in Maine where approximately 60% of Maine's population is over the age of 45—with approximately 23% at age 65 or older—and less than 30% of the population completed a college degree.<sup>28</sup>

One possible objection to a focus on full participation is that voters might reasonably choose not to rank candidates that they deem unlikely to advance beyond the first round of tabulation. Thus, the argument goes, exhaustion and truncation is merely a product of voter *expression* rather than voter confusion. But, it is unlikely that most voters can make such election-advancement forecasts with any certainty. Indeed, even voting for a major-party candidate in a partisan RCV election is not sufficient to ensure that a voter's ballot is not exhausted. For example, had Independent candidate Angus King failed to obtain a majority in the 2018 Maine Senate election, any voter who ranked only the Democratic candidate would have exhausted her ballot.

Moreover, as demonstrated above, the full participation rate in Maine's RCV elections was substantially lower than in traditional plurality and runoff elections, and demographic data demonstrates a strong correlation between ballot exhaustion and truncation (*i.e.*, failure to fully participate) and voter age and education.

Examining the data, it becomes clear that the complexity of the RCV system leads to voter confusion, which prevents voters from fully participating.

### III. THE PURPORTED BENEFITS OF RCV ARE NON-EXISTENT

#### A. Effects on Smaller Parties

One purported benefit of RCV is that it helps smaller parties. Australia provides an excellent test of the extent to which RCV can increase the likelihood that small parties can win legislative elections. Since the early 1900s, Australia has used RCV with single member districts for its lower chamber of parliament. Those elections have traditionally been dominated by two blocs—the Labor Party and a coalition of center-right parties—the Liberal and National parties and some affiliated state parties. The coalition generally avoids running candidates against each other in lower house elections. But the upper house is elected using a ranked-choice system for large multimember districts. This multimember system does allow for the election of many small party legislators. This fact helps us to clearly identify the effects of RCV on small party representation as there is an ample “supply” of small parties that could win seats if the electoral system permitted it. So consider the 2019 elections. In that election only 6 of 151 seats were won by candidates outside the major party blocs. In the Senate, the proportion of smaller party winners was only five times as large (14 of 76 seats). This suggests that the single-member RCV system such as that used in Maine penalized those smaller parties that were viable for Senate seats. These low numbers for small party representation fall far short of the riches promised.

Of course, one might argue that the lower house outcomes compare favorably to those under a plurality voting system. Indeed, those numbers are better than the U.S. where only two independent serve in the Senate (Angus King and Bernie Sanders) and the House's only independent (Justin Amash) was elected as a Republican. But there are many legislatures world-

<sup>28</sup> *Electorate Profile: Maine*, U.S. Census Bureau (Feb. 29, 2016), [https://www.census.gov/library/visualizations/2016/comm/electorate-profiles/cb16-tps34\\_voting\\_maine.html](https://www.census.gov/library/visualizations/2016/comm/electorate-profiles/cb16-tps34_voting_maine.html).

wide where small parties have achieved substantial representation under simple plurality rule. For example, in the British parliament, 75 out of 650 seats are held by parties other than Labor and the Conservatives.<sup>29</sup> In Canada, smaller parties and independents won 61 out of 338 seats.<sup>30</sup>

In summary, after reviewing the outcomes in the democracies most similar to the U.S., it does not seem that RCV is either a sufficient or necessary condition for the success of small parties.

## B. Effects on Turnout and Engagement

Advocates of RCV also argue that the system is likely to encourage greater participation among voters for two reasons. First, the RCV system purportedly encourages more candidates to run for office, providing a wider variety of choices to voters. Second, advocates contend that RCV will dampen incentives for the sorts of negative campaigning that turns voters away from politics. The argument is that candidates will refrain from attacking opponents if they expect to need high rankings from that opponent's supporters. The critics of RCV, however, argue that the complexity of the ballot and the tabulation procedures have the opposite effect of discouraging electoral participation.

On the question of turnout, the empirical literature supports the critical view that RCV elections discourage voter participation. Jason McDaniel finds that turnout dropped in San Francisco mayoral elections following the adopting of RCV, especially among minority groups.<sup>31</sup> In a study of several RCV cities matched against comparable plurality cities, David Kimball and Joseph Anthony find a 4 percentage point drop in turnout associated with RCV, although the estimate is not statistically significant on its own.<sup>32</sup> In a more recent study, McDonald finds a statistically significant five percentage point drop due to the introduction of RCV in municipal elections relative to similar cities that maintain plurality electoral systems. While there is disagreement about the magnitude and statistical reliability of the estimated declines in voter turnout, I am not aware of any study that finds a boost in turnout associated with switching to RCV from plurality voting.

there's so many other factors that weigh on voting. was it raining?

Because the Maine general election ballot includes both races that use RCV and those that use plurality rule, I cannot assess the impact of RCV adoption in Maine using the methodologies of the previously mentioned studies that look at the total number of ballots cast before and after adoption of RCV. So I will look at the issue of *total undervoting* (leaving the ballot blank for a specific race or exhaustion of that ballot) in RCV contests versus that in plurality contests. If RCV generated greater enthusiasm among voters we would expect to see far less total undervoting in RCV elections. A complication, however, is that the RCV ballots were used in the more high profile election where we would naturally expect more voter interest and

<sup>29</sup> If one were to focus only on England to eliminate the effects of regional parties, smaller parties won 8 out of 533 seats.

<sup>30</sup> If one were to ignore Quebec and the effects of Bloc Quebecois, small parties and independents won 29 out of 260 seats.

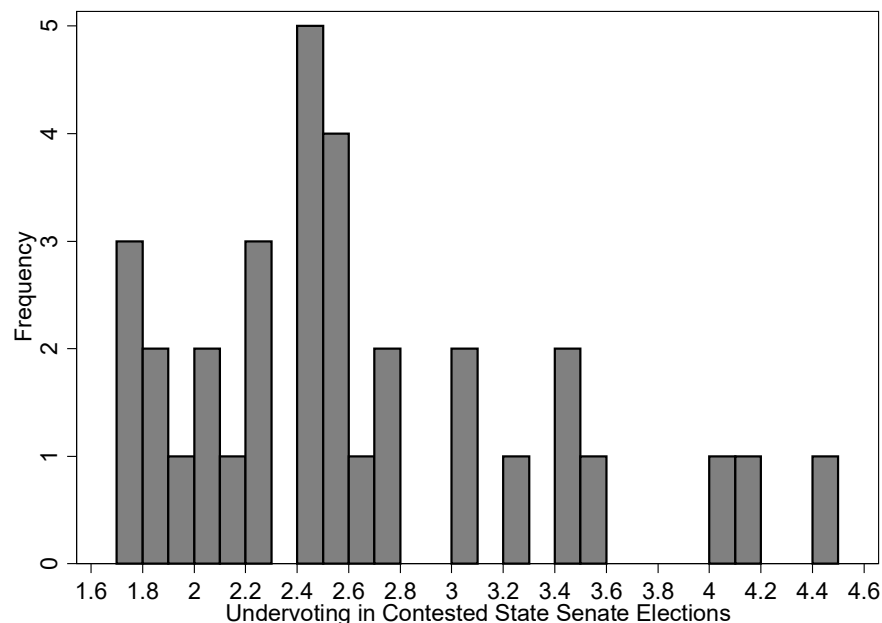
<sup>31</sup> Jason A. McDaniel, "Writing the Rules to Rank the Candidates: Examining the Impact of Instant-Runoff Voting on Racial Group Turnout in San Francisco Mayoral Elections," 38 *Journal of Urban Affairs* 387–408 (2016).

<sup>32</sup> David C. Kimball and Joseph Anthony, "Voter Participation with Ranked Choice Voting in the United States," Presented at the Annual Meeting of the American Political Science Association, Philadelphia, PA (2016).

engagement. Nevertheless, I find that several down-ballot, non-RCV races had lower percentages of total undervotes compared with RCV races.

but wouldn't that  
come from your  
earlier arg about  
confusion, not  
turnout

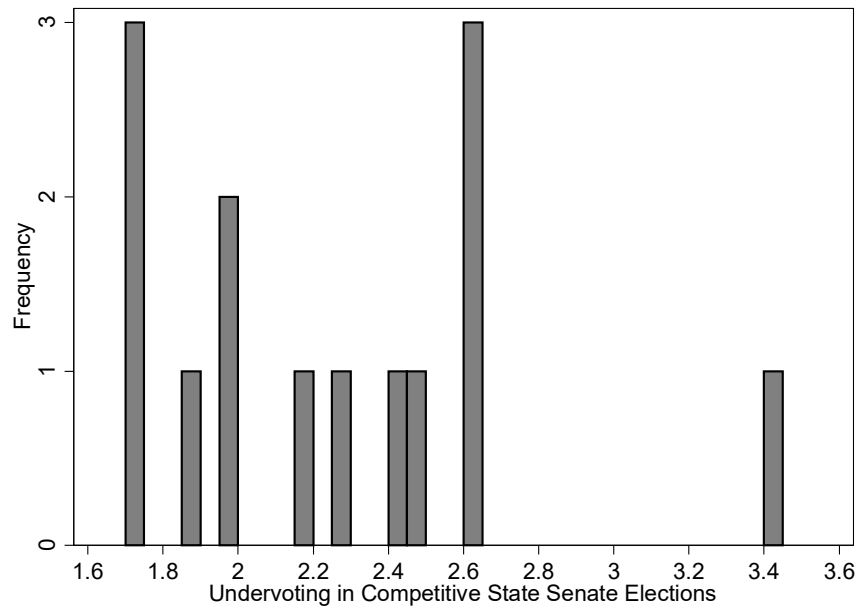
In 2018, the two most high-profile elections in Maine were the Senate and Governor's race. The Senate election, which utilized an RCV ballot, was skipped by 1.8% of the Election Day voters. The Governor's race (non-RCV) had 2.3% blank ballots. While this may appear as an advantage for RCV, as we will see, the difference between total undervoting for RCV elections and plurality down-ballot races is not substantively different. In the 2nd CD election in Maine, 2.2% of voters failed to register any vote at all, while in the Maine 2018 First Congressional District general election ("1st CD election"), 2.3% skipped voting. Based on data acquired from the Maine Secretary of State website, at least 25% of competitive state senate elections had lower rates of total undervoting, despite the fact that state legislative races tend to be lower profile than congressional elections (See Figure 9 and Table 9), and many of the state senate elections were not as competitive as the Congressional races.



**Figure 9: Rates of Total Undervoting in Contested State Senate Elections**

Even in Maine's plurality races that are less popular, less funded, and less advertised, the rate of total undervoting is not significantly different than the rates of total undervoting in the RCV elections.

If I focus on the 14 state senate races with less than a 20-point margin, the performance in the Congressional races looks even less impressive. (See Figure 10)



**Figure 10: Total Undervoting in Competitive State Senate Elections**

In Figure 10, approximately eight of the fourteen most-contested state senate races in Maine, which were on the ballot at the same time as the hotly contested and well-publicized RCV elections, had lower rates of total undervoting.

**Table 9: Comparison of Total Undervoting in RCV Elections and State Senate Elections**

| Election        | % Blank Ballots | % of Contested State Senate Districts with lower total undervoting | % of Competitive State Senate Districts with lower total undervoting |
|-----------------|-----------------|--|--|
| Senate          | 1.80%           | 9%   | 21%  |
| Governor        | 2.38%           | 36%  | 64%  |
| 1st CD election | 2.26%           | 27%  | 50%  |
| 2nd CD election | 2.18%           | 24%  | 43%  |

In summary, the rates of total undervoting in the RCV elections does not appear to be substantively different than those of the lower-profile plurality state senate elections. Accordingly, there is little empirical evidence that Maine voters are more interested and engaged under the RCV system.

undervotes are a different metric than turnout, and the latter is a better measure of interest and engagement

### C. The Spoiler Effect

Another major argument in favor of RCV is that it purports to eliminate the possibility of a third-party spoiler who throws the election to the candidate who is less preferred by a majority of voters. To illustrate suppose there are three candidates A, B, and C, and a majority of the voters prefer A to B. Despite the fact that a majority prefers A, A might lose if enough voters vote for C in the first round to give B a plurality. RCV, however, purports to solve this problem by eliminating the least popular candidate in round 1 (in this case C) and transferring that candidate's votes to the voters' second-choice candidates. Since A is preferred by a majority to B, A should win.

But RCV creates a different type of spoiler effect. Again suppose there are three candidates: A, B, and C. Moreover, assume that A would beat C in a candidate election but B would beat A. Thus, whether A wins the election depends on whether she faces B or C. To see how this generates a possible spoiler effect under RCV, suppose that  $\#A > \#B > \#C$  in the first round (where  $\#A$  is the number of votes received by candidate A). Subsequently, C would be eliminated and B would beat A in the second round. But were this the case, some of A's supporters could improve A's chances of winning by voting for C in the first round to help ensure a more favorable second round. Party A would want to transfer enough support to move C into the second position, but not so much that A falls out of the first position. Such a transfer of support is feasible only if  $\#A + \#C > \#B$ .

Voting theorists generally refer to this scenario as reflecting the *non-monotonicity* of the RCV system. The terminology reflects the fact that increasing the votes for a particular candidate can make that candidate more likely to lose. This outcome would be the case in the example above if  $\#A > \#C > \#B$  initially but enough C voters switched to A to allow B into the second round. Logically, *non-monotonicity* also implies that a party can increase its likelihood of winning by *losing* votes, as in the original example where A does better by shedding votes to C.

The non-monotonicity criticism of RCV usually focuses on abstract and hard-to-measure concepts like "voter welfare." But it has more tangible and observable implications as well. Note the many ways in which one of the parties/candidates in the above example can manipulate the outcome of an election due to this principle:

1. Candidate A could ask some of her supporters to vote C in round 1;
2. Candidate A could provide financial and other resources to candidate C;
3. Candidate A could run attack ads on B designed to appeal to C voters;
4. Candidate A could recruit candidate C to run; and
5. Candidate B could bribe candidate C not to run.

Thus, non-monotonicity opens up a number of possible avenues for electoral manipulation. It is an empirical question, however, as to how prevalent the RCV spoiler effect is relative to the plurality spoiler effect. A direct assessment is difficult in that it requires data on voters' true

preferences and their ranked-choice ballots. While data on full ranked-choice ballots is available for a handful of RCV elections, data on voters' true preferences are generally not available.

For this reason, scholars often use simulated elections to predict the frequency in which RCV elections demonstrate non-monotonic outcomes. One such effort is that of Joseph Ornstein and Robert Norman (2014), who calculate a lower bound estimate that 15% of competitive RCV elections result in monotonicity failures.<sup>33</sup>

Despite the fact that direct empirical verification of non-monotonicity is difficult to obtain, real world data can be used to identify elections where non-monotonicity was at least possible. Recall that a necessary condition for non-monotonicity in a three-candidate election is that  $\#A + \#C > \#B$ . Using the dataset on 98 RCV elections described above, I am able to verify whether this condition held for 93 of those contests.<sup>34</sup> I found that the necessary condition held in 27 of these elections (29%). That is, in 29% of the RCV elections that progressed beyond the first round, the spoiler effect described above ( $\#A + \#C > \#B$ ) was demonstrated. Thus, the opportunities for the electoral manipulations described above are far from rare.

#### **D. Non-Majority Winners**

Another important claim of RCV advocates is that the system purportedly ensures that the winner obtains a majority of the votes cast. This claim is incorrect empirically as ballot exhaustion means that the number of valid ballots used to determine the winner is actually far less than the number of votes cast. This fact was demonstrated in Maine's first RCV general election in 2018 when Jared Golden beat Bruce Poliquin in the 2nd CD election with only 49.2 percent of the ballots cast.

Using the data on 98 RCV elections nationwide, I can compute the percentage of times that the winner failed to obtain a majority of the ballots cast. Such was the outcome in over 60% of those elections (60 of 98). Non-majority winners occur almost 80% of the time in those RCV elections with five or more candidates. Thus, RCV cannot be trusted to ensure that the candidate with majority support wins an election, and it generally fails to accomplish one of the key tasks it was designed to perform.

### **CONCLUSION**

Despite the growing interest in electoral reforms that replace plurality and majority runoff elections with RCV, the evidence of its costs is substantial—particularly in Maine—and there is scarcely any empirical evidence that any of the purported benefits have come to fruition.

Representative democracy is a balancing act. At one end is the concern that the electoral machinery should provide voters with an ample set of choices as to who will govern in their name. But on the other end is the concern that voting procedures not be so complex, confusing,

<sup>33</sup> Joseph T. Ornstein and Robert Z. Norman, "Frequency of Monotonicity Failure under Instant Runoff Voting: Estimates Based on a Spatial Model of Elections," 161 *Public Choice* 1–9 (2014).

<sup>34</sup> For elections with more than three candidates, I examined whether the condition held in the round where there were only three candidates remaining. It is of course possible that the conditions for non-monotonicity held at earlier rounds, so my estimate is conservative.



and opaque as to deprive voters of the ability to exercise those choices in an informed and meaningful way. That is exactly what is happening with RCV, and what occurred in Maine in 2018. While RCV aspires to expand voter choice, the empirical evidence that it has done so is nearly non-existent, and is clearly not enough to balance its substantial burden on meaningful and informed choice.

A handwritten signature in black ink, appearing to read "Nolan McCarty". The signature is fluid and cursive, with the first name "Nolan" and last name "McCarty" clearly distinguishable.

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Professor Nolan McCarty

Date: 7/22/2020



**Appendix A:**

**Nolan McCarty**

Department of Politics and School of Public and International Affairs  
Princeton University  
Princeton, NJ 08544  
(609) 258-1862  
[nmccarty@princeton.edu](mailto:nmccarty@princeton.edu)

**Academic Affiliations**

Susan Dod Brown Professor of Politics and Public Affairs, Princeton University, 2007-present.

Research associate, National Bureau of Economic Research, 2012 – present. (Research fellow, 2006-2012).

Professor of Politics and Public Affairs, Princeton University, 2003 – 2007.

Fellow, Center for the Advanced Study in the Behavioral Sciences, 2004-2005.

Associate professor of Politics and Public Affairs (with tenure), Princeton University, 2001-2003.

Associate professor of Political Science (with tenure), Columbia University, 2000-2001.

Robert Eckles Swain National Fellow, Hoover Institution, Stanford University 1999-2000.

Assistant professor of Political Science, Columbia University, 1996-2000.

Assistant professor, School of Business Administration, University of Southern California, 1993-1996.

Instructor, Graduate School of Industrial Administration, Carnegie Mellon University, 1993.

**Administrative Positions and University Service**

Director, Data Intensive Social Science Initiative (2019 - current)

Chair, Student Appeal Panel (2019-2020)

Chair, Department of Politics (2011 - 2018)

Associate Dean, School of Public and International Affairs (2005-2011).

Acting Dean, School of Public and International Affairs (2007-2008).

Member, Council for the Princeton University Community Executive Committee (2015-2018)

Member, Princeton University Faculty Committee on Policy, (2015-2016)

Executive committee, Julis-Rabinowitz Center for Finance and Public Policy (2011 – 2015)

Executive committee, Center for the Study of Democratic Politics (2003 – 2019)

Elected member, Princeton University Committee on Appointments and Advancements (C/3) 2009-2010.

Co-Chair, School of Public and International Affairs Undergraduate Curriculum Reform (2010-2011).

Chair, Resources Committee, Council of the Princeton University Community (2007 - 2008).

Faculty Chair, PhD Program, School of Public and International Affairs, 2002-2004.

Director, Graduate Program in Political Economy, 2001-2004.

Member, Task Force on the Changing Nature of Government Service (chaired by Paul Volcker and Anne-Marie Slaughter)

Berman Prize in the Humanities selection committee

### **Honors, Awards, and Grants**

2016 Franklin L. Burdette/Pi Sigma Alpha Award for best paper presented at American Political Science Association meetings.

Best Paper Award, APSA Legislative Politics Section (2016)

Distinguished Visiting Scholar, Political Economy Group, Stanford Graduate School of Business (2016)

Best Paper Award, APSA State and Local Politics Section (2015)

Fellow, School of Social Sciences, Institute for Advanced Study (2014-2015).

University of Chicago Harris School, Visiting Fellow in Policy Entrepreneurship (2013)

Princeton University President's Lecture Series, 2010.

Member, American Academy of Arts and Sciences (elected 2010)

Fellow, Center for the Advanced Study in the Behavioral Sciences, 2004-2005.

Robert Eckles Swain National Fellow, Hoover Institution 1999-2000.

Patrick J. Fett Award for the best paper on the scientific study of Congress and the Presidency at the 1998 Midwest Political Science Association Meetings.

John M. Olin Fellowship in Political Economy (1990-1993)

Phi Beta Kappa (1990)

Council for Humanities and Social Sciences, Columbia University, 1996-97 (\$6,000)  
National Science Foundation Grant, 1995-96 (\$87,500)  
Institute for Social and Economic Theory and Research, Columbia University (\$10,000)  
Russell Sage Foundation “Polarization, Inequality, and Public Policy in the American States,” 2002-2003 (\$97,000)  
National Science Foundation “The Ideological Mapping of American Legislatures” (\$300,000)  
Russell Sage Foundation “The Political Economy of the State Pension Crisis” (\$111,000)  
John and Laura Arnold Foundation “Polarization, Partisanship and Electoral Reform in the American States” (\$154,000)

### **Education**

Ph.D. Political Economy. Carnegie Mellon University, Pittsburgh, PA. 1993.  
M.S. Political Economy. Carnegie Mellon University, Pittsburgh, PA. 1992.  
A.B. Economics with Honors. University of Chicago, Chicago, IL. 1990.

### **Books**

*Political Bubbles: Financial Crises and the Failure of American Democracy* (with Keith Poole and Howard Rosenthal). 2013. Princeton University Press.

Reviews: *The New Republic*

*Political Game Theory* (with Adam Meirowitz). 2006. Cambridge University Press.

*Polarized America: The Dance of Political Ideology and Unequal Riches* (with Keith T. Poole and Howard Rosenthal). Second edition. 2016. MIT Press.

First edition, 2006.

Named an “Outstanding Academic Title” by *Choice* in 2007.

Critics Roundtables: 2005 APSA, 2006 MPSA

Reviews: *American Prospect*, *Perspectives on Politics*, *Chicago Tribune*, *American Review of Politics*, *Economic History Net*, *Independent Review*, *The Week*, *Journal of Economic Issues*, *Journal of Sociology and Social Welfare*, *The Independent Review*, *Political Science Quarterly*

*Can America Govern Itself?* Co-edited with France Lee. 2019. Cambridge University Press.

*Polarization: What Everyone Needs to Know*. 2019. Oxford University Press.

### Other Monographs

*The Realignment of National Politics and the Income Distribution* (with Keith T. Poole and Howard Rosenthal). 1997. American Enterprise Institute Studies on Understanding Economic Inequality.

### Journal Articles

- [22] “Geography, Uncertainty, and Polarization” (with Jonathan Rodden Boris Shor, Chris Tausanovitch, and Chris Warshaw) 2018. *Political Science Research and Methods*
- [21] “Regulation and Self-Regulation of a Complex Industry.” 2017. *Journal of Politics* 79(4):1220-1235.
- [20] “A Primary Cause of Partisanship? Nomination Systems and Legislator Ideology” (with Eric McGhee, Seth Masket, Boris Shor, and Steven Rogers). 2014. *American Journal of Political Science* 58(2):337-351. (co-winner of the 2015 State Politics and Policy Best Journal Article Award)
- [19] “The Ideological Mapping of American Legislatures” (with Boris Shor). 2011 *American Political Science Review* 105(3):530-551.
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- [10] “The Politics of Blame: Bargaining before an Audience” (with Timothy Groseclose) 2000. *American Journal of Political Science*. 45(1):100-119.
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- [5] “Advice and Consent: Senate Response to Executive Branch Nominations 1885-1996” (with Rose Razaghian). 1999. *American Journal of Political Science*, 43(3):1122-43.
- [4] “An Empirical Spatial Model of Congressional Campaigns” (with Keith T. Poole). 1998. *Political Analysis*, 7(1):1-30.
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### **Book Chapters and Invited Contributions**

- [32] “Learning From Each Other: Causal Inference and American Political Development” (with Jeffery A. Jenkins and Charles Stewart) *Public Choice*
- [31] “The Political Obstacles to Tackling Economic Inequality in the United States” In Dani Rodrik and Olivier Blanchard eds. *Combating Inequality*, MIT Press. (forthcoming)
- [30] “Polarization and the Changing American Constitutional System: The Case of Federalism” forthcoming in Eric Patashnik and Wendy Schiller eds. *The Dynamics of American Democracy: Partisan Polarization, Political Competition and Government Performance* University of Kansas.
- [29] “Anxieties of American Democracy,” (with Frances Lee). In Frances Lee and Nolan McCarty *Can America Govern Itself?* Cambridge University Press.
- [28] “Polarization and the Changing Constitutional System.” In Frances Lee and Nolan McCarty *Can America Govern Itself?* Cambridge University Press.
- [27] “Anxieties of American Democracy,” (with Frances Lee). In Frances Lee and Nolan McCarty *Can America Govern Itself?* Cambridge University Press.

- [26] “On the Theory of Parties” (with Eric Schickler). 2018. *Annual Review of Political Science* 21(1):175-193.
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- [8] “The Limits of Electoral and Legislative Reform in Addressing Polarization.” 2011. *University of California Law Review* 99:359-372.



- [7] Review of Benjamin Page and Lawrence Jacobs *Class Wars: What Americans Really Think About Economic Inequality*. 2010. *The Forum* 8(2): article 10
- [6] Review of Sean Theriault *Party Polarization in Congress*. 2009. *Political Science Quarterly* 124(3):551-552.
- [5] Review of Barbara Sinclair *Party Wars: Polarization and the Politics of National Policymaking*. 2007. *Political Science Quarterly* 122(1):159-150.
- [4] “Congressional Studies and Political Economy” *The Political Economist* Volume XIII, Issue 3 Fall 2006.
- [3] Comment on Melissa Cully Anderson and Nathaniel Persily “Regulating Democracy Through Democracy: The Use of Direct Legislation in Election Law Reform.” 2005. *University of Southern California Law Review* 78(4):1035-1040.
- [2] Review of Keith L. Dougherty *Collective Action under the Articles of Confederation*, 2002. *Political Science Quarterly* 117(1):173-174.
- [1] Review of Patricia Heidotting Conley *Presidential Mandates: How Elections Shape the National Agenda*. 2001. *Presidential Studies Quarterly*, p. 747-749.

### **White Papers and Policy Reports**

Chair and lead author. “Political System Subcommittee Report” in Stigler Center Committee on Digital Platforms Report, July 2019.

Chair and lead author, Appropriation Reform Subcommittee American Political Science Association Task Force on Congressional Reform.

### **Opinion Pieces**

“Grading the Cromnibus” *Washington Post Monkey Cage Blog* December 12, 2014

“Will Loretta Lynch End Too Big To Jail” *Washington Post Monkey Cage Blog* November 13, 2014

“Five Things the Goldman Tapes Teach Us About Financial Regulation” *Washington Post Monkey Cage Blog* September 30, 2014

“What We Know and Don’t Know about Our Polarized Politics” *Washington Post Monkey Cage Blog* January 8, 2014

“The Politics of Bad Apples” *Washington Post Monkey Cage Blog* October 24, 2013

“Hate Our Polarized Politics? Why You Can’t Blame Gerrymandering.” *Washington Post* October 26, 2012. [http://articles.washingtonpost.com/2012-10-26/opinions/35500270\\_1\\_polarization-districts-independent-voters](http://articles.washingtonpost.com/2012-10-26/opinions/35500270_1_polarization-districts-independent-voters)

“The Price of Principle” *Huffington Post* July 20, 2010. (with Keith Poole, Thomas Romer, and Howard Rosenthal).



“McCain for President?: A Liberal Conservative Oscillation Cements His Maverick Reputation.” *San Diego Union Tribune* August 31, 2008 (with Keith Poole and Howard Rosenthal)

[http://www.signonsandiego.com/uniontrib/20080831/news\\_lz1e31mccarty.html](http://www.signonsandiego.com/uniontrib/20080831/news_lz1e31mccarty.html)

“Obama for President?: Moderate and independent voters still must be convinced” *San Diego Union Tribune* August 24, 2008 (with Keith Poole and Howard Rosenthal)

[http://www.signonsandiego.com/uniontrib/20080824/news\\_lz1e24obama.html](http://www.signonsandiego.com/uniontrib/20080824/news_lz1e24obama.html)

“Neither Candidate Likely to Reduce Rancor” *Politico*, July 24, 2008 (with Keith Poole and Howard Rosenthal) <http://www.politico.com/news/stories/0708/12013.html>

Blog: <http://nolanmccarty.com>

Occasional contributor: <http://themonkeycage.org>

### **Other Work in Progress**

“Unequal Incomes, Ideology and Gridlock: How Rising Inequality Increases Political Polarization” with Boris Shor and John Voorhies. (Winner of the 2016 Franklin L. Burdette/Pi Sigma Alpha Award by the American Political Science Association and Best Paper Awards from the APSA Legislative and State and Local Politics sections.)

“Agenda Control Under Uncertainty” (with Steven Callander)

“The Evolution from a Democratic to Republican South” (with Steven Rogers)

“Congressional Dysfunction and Bureaucratic Capacity.” (with Alex Bolton and Sara Kerovsky).

“Polarization and the American Constitution.”

### **Courses Taught**

#### **Doctoral Level**

Congressional Politics. Princeton University.

Bureaucratic Politics. Princeton University.

Analysis of American Political Institutions. Princeton University.

Democratic Processes. Columbia University

Political Methodology Sequence. Columbia University

Colloquium on Political Organizations and Interest Groups. Columbia University

Research Controversies in American Politics. Columbia University

Mathematics for Political Science. Columbia University

The Politics of Inequality in the U.S. and Western Europe. Princeton University

Game Theory and Political Theory. Columbia University

Formal Theory I. Princeton University.

## **Master's Level**

Legislative Politics. Princeton University. (Spring 2003)  
Advanced Econometrics and Public Policy. (Spring 2003)  
Business, Government, and Society. University of Southern California  
Business and Its Nonmarket Environment. University of Southern California

## **Undergraduate**

Democracy. Princeton University.  
Democracy and Constitutional Engineering. Columbia University Summer Program in  
Tunis and Istanbul.  
Polarized America: Polarization, Inequality and the Future of American Politics.  
Princeton University.  
American Politics. Princeton University.  
The Development of American Political Institutions. Princeton University.  
The Politics of Reform. Columbia University  
Decline of the American Party System? Columbia University  
Introduction to American Government and Politics. Columbia University  
Public Finance. Carnegie Mellon University

## **Professional Activities**

### **Conference Participation**

American Economic Association (2002)  
American Political Science Association (various years)  
Can Madison's Constitution Survive Polarized Parties?, UC Berkeley (2016)  
Challenges in Political Economy, Harvard University (2002)  
Comparative Political Economy Workshop, Harvard (2006)  
Designing Democratic Institutions, LSE (2008)  
Eric M. Mindich Encounter with Authors, Center for Basic Research in the Social  
Sciences, Harvard University (2005) (for *Polarized America*)  
Encounter with the Authors, Center for Basic Research in the Social Sciences, Harvard  
University (1999) (participant)  
Emory University Conference on Institutions and Law-Making (2013)  
European Political Science Association (2011-2013)  
History and Congress Conference, Columbia University (2001,2002)  
History and Congress Conference, Berkeley (2010)  
History and Congress Conference, Brown University (2011)  
History and Congress Conference, Stanford University (1999,2004)  
History and Congress Conference, University of Georgia (2012)  
Impact of Direct Democracy, University of Southern California and University of  
California at Irvine (2005)  
IGIER/PIER Conference on Political Economics, University of Pennsylvania (2002)  
Macro-Politics of Congress, University of Colorado (2001)

Midwest Political Science Association (various years)  
 National Bureau of Economic Research Summer Institute (2011)  
 Northeastern Political Science Association (2002)  
 Policy History Conference (2012)  
 Political Accountability Conference, Princeton University (2002)  
 Political Institutions and Economic Policy, Harvard University (2002, 2012)  
 Political Institutions and Economic Policy, Princeton University (2013)  
 Public Choice World Congress Plenary Speaker (2012)  
 Public Choice Society (various years)  
 Priorat Workshop on Theoretical Political Science (2013)  
 Russell Sage Social Dimensions of Inequality Conference (2003)  
 Social Science History Association (1998)  
 Society for Political Methodology Summer Meetings (1997-1999)  
 Southern California Political Economy Association (1995)  
 Standing Group on Political Economy of the ECPR (2009)  
 Stanford Institute of Theoretical Economics (1995)  
*State of the Parties: 1996 and Beyond*, Ray C. Bliss Institute for Applied Politics (1997)  
 University of George Elections Conference (2008, 2012)  
*Transformations of American Politics*, Harvard University (2003,2004)  
 W. Allen Wallis Political Economy Conference, Rochester University (1996,2002)

### **Invited Workshops**

Academia Sinica (Taiwan) (2013)  
 Bowling Green State University (2019)  
 California Institute of Technology, Department of Humanities and Social Sciences (1992)  
 Center for the Advance Study in the Behavioral Sciences (2005)  
 Columbia University, Department of Political Science (1994, 1996, 2009)  
 Columbia University Law School, Administration in the Age of Polarization (2015)  
 ETH/ Zurich Risk Center Conference on Economic, Political, and Social Bubbles (2015)  
 Harvard University, Department of Government (1998)  
 Harvard University, Center for American Political Studies (2006)  
 Hoover Institution, Stanford University (2000, 2005)  
 Instituto Tecnológico Autónomo de México (2002)  
 London School of Economics and Political Science (2009)  
 Michigan State University, Department of Political Science (2002)  
 New York University, Department of Politics (1998, 2001)  
 New York University, School of Law (2002, 2016)  
 Northwestern University, Department of Political Science (2003)  
 Northwestern University, Managerial Economics and Decision Sciences (2010,2019)  
 Nuffield College, Oxford University (2009)  
 Ohio State University (1993, 2007)  
 Princeton University (1992, 1998, 2000)  
 Stanford University Political Science (2005,2016)  
 Stanford University Graduate School of Business (1992,1994,1995,1999, 2016)

Stanford University Law School (2005)  
 Universidad Extranada de Bogota (2000)  
 University of California at Berkeley, Department of Political Science (2000,2004)  
 University of California at Berkeley, Goldman School (2007)  
 University of California at Davis (2016)  
 University of California at Los Angeles, Department of Political Science (1995,1999)  
 University of California at San Diego, Department of Political Science (2000)  
 University of Chicago, Department of Political Science (2005)  
 University of Chicago, Becker Friedman Institute, The Price of Policy Uncertainty (2015)  
 University of Chicago, Harris School (2013,2019)  
 University of Essex, Department of Government (2009)  
 University of Essex, Political Economy (2009)  
 University of Georgia (2010)  
 University of Kentucky, Department of Political Science (2000)  
 University of Michigan (2016)  
 University of Minnesota, Department of Political Science (2006)  
 University of Oregon, Department of Political Science (1996)  
 University of Pittsburgh, Department of Political Science (2007)  
 University of Rochester, Department of Political Science (1995,1996,1998,1999)  
 University of Southern California, Marshall School of Business (1993, 2000)  
 Washington University, Department of Political Science (1999)  
 Yale University, Department Political Science (1992, 2002)  
 Yale University School of Management (1993)

## Referee Service

Academic Press, *American Economic Review*, *American Journal of Political Science*, *American Political Science Review*, *American Politics Quarterly*, *American Sociological Review*, Berkeley Electronic Press, *British Journal of Political Science*, *Business and Politics*, Cambridge University Press, Columbia University Press, *Comparative Political Studies*, *Economic Inquiry*, *Economics and Politics*, *Electoral Studies*, *European Economic Review*, *European Journal of Political Research*, *Governance*, *International Studies Quarterly*, *Journal of Economic Theory*, *Journal of Law and Economics*, *Journal of Law Economics and Organization*, *Journal of Institutional and Theoretical Economics*, *Journal of Political Economy*, *Journal of Politics*, *Journal of Public Economics*, *Journal of Public Economic Theory*, *Journal of Human Capital*, *Journal of Theoretical Politics*, *Legislative Studies Quarterly*, MIT Press, National Science Foundation, Oxford University Press, *Party Politics*, *Political Analysis*, *Political Behavior*, *Political Research Quarterly*, *Political Science Quarterly*, Princeton University Press, *Public Administration Review*, *Public Choice*, *Rand Journal of Economics*, *Review of Economics and Statistics*, Russell Sage Foundation Press, *Social Choice and Welfare*, *Social Problems*, University of Chicago Press, University of Michigan Press, *World Politics*.

## **Outside Professional Activities**

Member of Methodology committee, SocialScienceOne  
Chair, Appropriations Reform Subcommittee, APSA Panel on Congressional Reform  
Chair, Working Group on the Politics of Social Media Platforms, Stigler Center, University of Chicago  
Founding Editor-in-Chief, *Quarterly Journal of Political Science* (2005-2014)  
Co-Chair, Anxieties of Democracy, Institutions Working Group, Social Science Research Council.  
Steering committee, Anxieties of Democracy Program, Social Science Research Council.  
Steering committee, SSRC/Deutsche Forschungsgemeinschaft program on Democracy.  
Council member, *Midwest Political Science Association* (2009-2012)  
Editorial committee, *Annual Review of Political Science*  
Executive committee, Section on Political Economy, American Political Science Association (2004-2007)  
Chair, U.S. Subcommittee of APSA Taskforce on Political Negotiation.  
Program co-chair, 2005 Midwest Political Science Association Meetings.  
Editorial board, *Political Science Research and Methods*  
Editorial Board, *American Journal of Political Science*  
Editorial Board, *Legislative Studies Quarterly*  
Section Head, Political Economy, American Political Science Association Conference, 2002.  
Instructor, *Political Game Theory*, European Consortium of Political Research Summer School, Ljubljana, Slovenia (2009 and 2010)  
Instructor, National Science Foundation Program on Empirical Implications of Theoretical Models, University of Michigan (2006)  
Instructor, National Science Foundation Program on Empirical Implications of Theoretical Models, Harvard University (2002)  
Instructor, National Science Foundation Program on Empirical Implications of Theoretical Models, Washington University, St. Louis (2004, 2006)  
Section Head, Parties and Interest Groups, Midwest Political Science Association, 2003.  
Co-Leader, American Political Science Association MENA Workshop, Cairo Egypt, 2014.

## **Legal Consulting**

Expert (written affidavits, court testimony) *Romo v. Detzner* 2012-CA-000412 (Fla. Cir. Ct., Leon County); Rebutted expert testimony challenging the legality of Florida congressional districting maps.

Expert (written affidavits) *NAACP v. Husted* Case 2:14-CV-404 (US District Court for the Southern District Ohio Eastern Division); Rebutted expert testimony concerning the impact of changes in early in-person voting procedures in Ohio.

Expert (written affidavits) *League of Women Voters of Florida, et al. v. Detzner, et al.*, Case No. 2012-CA-002842; Rebutted expert testimony challenging the legality of Florida state senate districting maps.

Expert (written affidavits, court testimony) *Ohio Democratic Party et al v. Husted et al.* Case 2:15-CV-1802 (US District Court for the Southern District Ohio Eastern Division); Rebutted expert testimony concerning the impact of changes in early in-person voting procedures in Ohio.

Expert (written affidavits) *One Wisconsin Institute, Inc. et al. v. Nichol, et al* Case:15-CV-324 (US District Court for the Western District of Wisconsin).; Rebutted expert testimony concerning the impact of changes in election administration in Wisconsin.

Expert (written affidavits, court testimony) *The Northeast Ohio Coalition for the Homeless, et al. vs. Jon Husted, et al.* Case 2:06-CV-00896. (US District Court for the Southern District Ohio Eastern Division). Rebutted expert testimony that changes to identification requirements on absentee and provisional ballots in Ohio have disproportionately reduced opportunities for minority voters to participate in elections.

Expert (written affidavits, court testimony) *League of Women Voters of PA et al., v. The Commonwealth of Pennsylvania et al.*, Civ. No. 261 MD 2017 (Commonwealth Court of Pennsylvania). Congressional districting litigation.

Expert (written affidavits, court testimony) *Agre et al. v. Wolf et al.*, Case 17-CV-4392 (United States District Court for the Eastern District of Pennsylvania). Congressional districting litigation.

### **Professional Memberships**

American Political Science Association  
Midwest Political Science Association  
European Political Science Association



## **Appendix B: Description of Data Sources**

### **1. Data from 98 Municipal RCV Elections**

This dataset originated from the appendix of a report by the Maine Heritage Policy Center. The report is available at <https://mainepolicy.org/project/false-majority/>. To ensure the quality of the data, I consulted all of the original sources, but found no discrepancies. The online election results for five cases, however, were no longer available. These include three elections from Aspen, Colorado and two from Burlington, VT. The results of my analysis would not change if those cases were dropped. I updated the data by adding two elections in San Francisco from 2019. I am not aware of any other RCV elections that have occurred since the report for which ballot data is available. I supplemented these data in two ways. First, I tabulated the number of candidates (exclusive of write-ins). Second, I verified whether a non-monotonicity outcome was possible for the tabulation round with three candidates.

### **2. Cast Ballot Data from 2018 Maine 2nd Congressional District, Democratic Congressional Primary, and Democratic Gubernatorial Primary**

Data on the cast ballots for the 2018 Maine elections is available from the Maine Secretary of State, Bureau of Corporations, Elections, and Commissions at <https://www.maine.gov/sos/cec/elec/results/results18.html#Nov6>. I wrote computer code to determine which ballots were exhausted and truncated. I then created aggregate percentage of exhausted and truncated ballots for each town.

### **3. Maine Voter file for 2018 Election**

Counsel was able to obtain the Maine voter registration file containing the records of the voters who participated in the 2018 general election. The data was provided by The Data Trust <https://thedatatrust.com/>. The Data Trust merged the voter file with commercial data from Acxiom (<https://www.acxiom.com/>) on the education level of each voter. I was able to use this data plus the dates of birth provided in the voter file to generate age and education profiles for each of Maine's towns. I then matched these data to the aggregated cast ballot data. This data is available upon request from counsel.

### **4. Data on 2018 Maine State Senate Elections**

Data on election returns for the 2018 Maine state senate elections is available from the Maine Secretary of State, Bureau of Corporations, Elections, and Commissions at <https://www.maine.gov/sos/cec/elec/results/results18.html#Nov6>.

### **5. Data on 2018 Congressional Elections in California and Washington**

Data on California and Washington primary and general elections was obtained from the elections administration websites of each state. See <https://results.vote.wa.gov/results/20180807/Federal.html>; <https://results.vote.wa.gov/results/20181106/Federal.html>; <https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/statewide-direct->

[primary-june-5-2018/statement-vote/](https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/general-election-november-6-2018/statement-vote/); <https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/general-election-november-6-2018/statement-vote/>.

## **6. Data on Majority Runoff Primaries**

The data from 1990 to 2002 was drawn from Engstrom, Richard L., and Richard N. Engstrom. 2008. “The majority vote rule and runoff primaries in the United States.” *Electoral Studies* 27(3):407-416. The data were updated through the present using election returns reported online.



# EXHIBIT B

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE**

**ROBERT HAGOPIAN,**  
16 Hagopian Ct.  
Madison, ME 04950

**DUANE R. LANDER,**  
P.O. Box 1113  
Greenville, ME 04441

**STERLING B. ROBINSON, and**  
1330 Atlantic Highway  
Warren, ME 04864

**JAMES T. TRUDEL,**  
616 Fuller Rd.  
Hermon, ME 04401

**Plaintiffs,**

v.

Case No. \_\_\_\_\_

**MATTHEW DUNLAP, in his official capacity as**  
Secretary of State of Maine,  
148 State House Station  
Augusta, Maine 04333-0148

**AARON FREY, in his official capacity as**  
Attorney General of Maine,  
6 State House Station  
Augusta, ME 04333

**JANET MILLS, in her official capacity as**  
Governor of Maine,  
#1 State House Station  
Augusta, ME 04333

**Defendants.**

**DECLARATION OF ROBERT HAGOPIAN IN SUPPORT OF PLAINTIFFS'**  
**COMPLAINT AND MOTION FOR A PRELIMINARY INJUNCTION**

I, Robert Hagopian, hereby declare as follows under the penalty of perjury.

1. The following statements are based on my personal knowledge, and if called to testify I could swear competently thereto.

2. I am 73 years old and of sound mind.

3. I am a citizen of the United States and of the State of Maine.

4. I reside at 16 Hagopian Ct., Madison, ME 04950 in Somerset County.

5. I am a former eighth grade science teacher and currently run my own business, an indoor firing range.

6. I received an undergraduate degree from William Penn University in 1969. I received a Master's in education from the University of Southern Maine in the early 1980's.

7. I am an eligible Maine voter and am duly registered as a Republican to vote in Maine's federal elections.

8. I voted in the 2018 election for Maine's Second Congressional Election ("2018 Congressional Election").

9. In the 2018 Congressional Election, I cast my ballot for Bruce Poliquin in the first round, followed by each of the other candidates in the subsequent rounds. I ranked Jared Golden last.

10. I completed my ballot in this manner to ensure that my vote was counted and to put additional candidates between my first choice, Bruce Poliquin, and my last choice, Jared Golden.

11. Bruce Poliquin was the only candidate I truly supported.

12. I did not wish to express support for the other candidates because they stood for principles that violated my political convictions.

13. However, I understood that if Bruce Poliquin was eliminated, my ballot would be discarded if I did not vote in additional rounds.

14. Accordingly, I voted for candidates other than Bruce Poliquin to ensure that my ballot was counted and to prevent Jared Golden from being elected.

15. Were it not for ranked-choice voting, I would not have supported candidates other than Bruce Poliquin.

16. I plan to vote in Maine's 2020 Senate election ("2020 Senatorial Election").

17. In the 2020 Senatorial Election, I once again want to ensure that my vote will be counted.

18. I therefore plan to rank Susan Collins first, followed by the independent candidates, followed last by Sara Gideon.

19. I do not support Sara Gideon or the independent candidates. However, I will rank them on my ballot to ensure that it is counted.

20. As a result, I will have to once again violate my political convictions in order to ensure that my vote is counted.

21. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Robert Hagopian  
Robert Hagopian

July 21, 2020  
Date

# EXHIBIT C

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE**

**ROBERT HAGOPIAN,**  
16 Hagopian Ct.  
Madison, ME 04950

**DUANE R. LANDER,**  
P.O. Box 1113  
Greenville, ME 04441

**STERLING B. ROBINSON, and**  
1330 Atlantic Highway  
Warren, ME 04864

**JAMES T. TRUDEL,**  
616 Fuller Rd.  
Hermon, ME 04401

**Plaintiffs,**

v.

**MATTHEW DUNLAP, in his official capacity as**  
Secretary of State of Maine,  
148 State House Station  
Augusta, Maine 04333-0148

**AARON FREY, in his official capacity as**  
Attorney General of Maine,  
6 State House Station  
Augusta, ME 04333

**JANET MILLS, in her official capacity as**  
Governor of Maine,  
#1 State House Station  
Augusta, ME 04333

**Defendants.**

Case No. \_\_\_\_\_

**DECLARATION OF DUANE R. LANDER IN SUPPORT OF PLAINTIFFS'**  
**COMPLAINT AND MOTION FOR A PRELIMINARY INJUNCTION**

I, Duane R. Lander, hereby declare as follows under the penalty of perjury.

1. The following statements are based on my personal knowledge, and if called to testify I could swear competently thereto.

2. I am 79 years old and of sound mind.

3. I am a citizen of the United States and of the State of Maine.

4. I reside at 12 Rail Lane, Harford's Point Twp., Maine, 04441, and my mailing address is P.O. Box 1113, Greenville, ME 04441 in Piscataquis County.

5. I am a United States Army veteran and retired engineer. I attended classes at the University of Maine, and I graduated from the Wentworth Institute of Technology in Massachusetts in 1963. I graduated from the Army School of Engineers in 1964, and I graduated from Bryant and Stratton Business School in Massachusetts in 1968.

6. I am an eligible Maine voter and am duly registered to vote in Maine's federal election.

7. I actively participate in Republican Party politics in my county. I have served as the Chairman for the Piscataquis County Republican Committee on several occasions. I served as a member of the Maine House of Representatives from 1984-1986. I was also a delegate on behalf of the State of Maine to the Republican National Conventions in 1992 and 1996.

8. I voted in the 2018 election for Maine's Second Congressional Election ("2018 Congressional Election").

9. I was very confused about the way the ranked-choice voting system works.

10. In the 2018 Congressional Election, I cast my ballot for Bruce Poliquin in each round. In other words, I filled in the "circle" for Poliquin 4 times. I did not want to vote for any other candidate.

11. My understanding was that I needed to fill in each circle for Poliquin to ensure that my vote was counted. I understood that if I only filled in the first circle for Poliquin, my vote would not be counted. I know many people that voted this way, and my understanding was that their votes were not counted.

12. I did not understand how votes for other candidates would be counted. I certainly did not understand that Poliquin could receive the highest number of votes in the first round and lose in the second round. I still do not understand how votes for other candidates could be recounted as votes for the eventual winner, Jared Golden. The significance of a vote for another candidate was never explained to me prior to my vote.

13. Since the 2018 Congressional Election, I have attempted to better understand ranked-choice voting. Among other things, I have had multiple conversations with experts in ranked-choice voting.

14. I plan to vote in Maine's 2020 Senate election ("2020 Senatorial Election").

15. Now that Sara Gideon will be the Democratic nominee for Senate, I plan to vote for Susan Collins in the 2020 Senatorial Election.

16. Based on my current understanding of ranked-choice voting, in order to ensure that my vote is counted, I still understand that I must fill in the "circle" for Susan Collins for each round, which I plan to do.

17. I do not want to vote for Ms. Gideon or any of the other independent candidates. I also want to ensure that my vote is counted.

18. I declare under penalty of perjury that the foregoing is true and correct.



/s/ Duane R. Lander

Duane R. Lander

July 20, 2020

Date

# EXHIBIT D

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE**

**ROBERT HAGOPIAN,**  
16 Hagopian Ct.  
Madison, ME 04950

**DUANE R. LANDER,**  
P.O. Box 1113  
Greenville, ME 04441

**STERLING B. ROBINSON, and**  
1330 Atlantic Highway  
Warren, ME 04864

**JAMES T. TRUDEL,**  
616 Fuller Rd.  
Hermon, ME 04401

**Plaintiffs,**

v.

Case No. \_\_\_\_\_

**MATTHEW DUNLAP, in his official capacity as**  
Secretary of State of Maine,  
148 State House Station  
Augusta, Maine 04333-0148

**AARON FREY, in his official capacity as**  
Attorney General of Maine,  
6 State House Station  
Augusta, ME 04333

**JANET MILLS, in her official capacity as**  
Governor of Maine,  
#1 State House Station  
Augusta, ME 04333

**Defendants.**

**DECLARATION OF STERLING B. ROBINSON IN SUPPORT OF PLAINTIFFS'**  
**COMPLAINT AND MOTION FOR A PRELIMINARY INJUNCTION**

I, Sterling Robinson, hereby declare as follows under the penalty of perjury.

1. The following statements are based on my personal knowledge, and if called to testify I could swear competently thereto.

2. I am 72 years old and of sound mind.

3. I am a citizen of the United States and of the State of Maine.

4. I reside at 1330 Atlantic Highway, Warren, ME 04864 in Knox county.

5. I am an eighth-generation Maine resident, and I currently reside in a home built by my family, which is one of the only remaining original homes that was built on the Waldo Patent land grant.

6. I am retired, but I was previously employed in a number of different positions, including as a tractor trailer driver and an office manager and personal assistant to a listed artist.

7. I attended several years of post-secondary education at the University of Maine in 1967 to 1968. I participated in the Continuing Education Division and did not receive an undergraduate degree.

8. I am an eligible Maine voter and am duly registered as a Republican to vote in Maine's federal elections.

9. I voted in the 2018 election for Maine's Second Congressional Election ("2018 Congressional Election").

10. In the 2018 Congressional Election, I cast my ballot for Bruce Poliquin in the first round, but I did not fill out a vote for the remaining rounds of voting.

11. I completed my ballot in this manner, because after researching the ranked-choice voting options, I was under the mistaken impression that it was not necessary to fill out additional rounds of the ballot to ensure that my ballot would not be exhausted.

12. I was confused regarding the actions necessary to ensure that my vote was counted in each round of ranked-choice voting.

13. I did not understand the significance of ranking other candidates on the ballot in the 2018 Congressional Election. In particular, I did not understand that the failure to rank additional candidates risked having my ballot exhausted.

14. Had I understood the significance of ranking other candidates, I would have done so in the 2018 Congressional Election.

15. I plan to vote in Maine's 2020 Senate election ("2020 Senatorial Election").

16. In the 2020 Senatorial Election, I will be voting for Susan Collins as in the first round, but I intend to rank the other Senate candidates in the remaining rounds to ensure that my ballot is fully counted.

17. My goal is ultimately to ensure that my vote is counted.

18. However, I still do not understand how to rank the candidates to both ensure that my preferred candidate is in the best position to win while ensuring that my ballot will not be exhausted.

19. I do not know where or how to research strategic ranked-choice voting, and I am concerned that in attempting to ensure my ballot is counted, I could unknowingly undermine my voting interests.

20. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Sterling B. Robinson  
Sterling B. Robinson

July 22, 2020  
Date

# EXHIBIT E

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE**

**ROBERT HAGOPIAN,**  
16 Hagopian Ct.  
Madison, ME 04950

**DUANE R. LANDER,**  
P.O. Box 1113  
Greenville, ME 04441

**STERLING B. ROBINSON, and**  
1330 Atlantic Highway  
Warren, ME 04864

**JAMES T. TRUDEL,**  
616 Fuller Rd.  
Hermon, ME 04401

**Plaintiffs,**

v.

**MATTHEW DUNLAP, in his official capacity as**  
Secretary of State of Maine,  
148 State House Station  
Augusta, Maine 04333-0148

**AARON FREY, in his official capacity as**  
Attorney General of Maine,  
6 State House Station  
Augusta, ME 04333

**JANET MILLS, in her official capacity as**  
Governor of Maine,  
#1 State House Station  
Augusta, ME 04333

**Defendants.**

Case No. \_\_\_\_\_

**DECLARATION OF JAMES T. TRUDEL IN SUPPORT OF PLAINTIFFS'**  
**COMPLAINT AND MOTION FOR A PRELIMINARY INJUNCTION**

I, James T. Trudel, hereby declare as follows under the penalty of perjury.

1. The following statements are based on my personal knowledge, and if called to testify I could swear competently thereto.

2. I am 73 years old and of sound mind.

3. I am a citizen of the United States and of the State of Maine.

4. I reside at 616 Fuller Rd, Hermon, ME 04401 in Penobscot County.

5. I am a retired Lieutenant Colonel of the Maine Air National Guard and former electrical engineer.

6. I received a Bachelor of Science in Electrical Engineering Technology from the University of Maine in Orono in 1984.

7. I am an eligible Maine voter and am duly registered as an Independent to vote in Maine's federal elections.

8. I voted in the 2018 election for Maine's Second Congressional Election ("2018 Congressional Election").

9. In the 2018 Congressional Election, I cast my ballot for Bruce Poliquin in the first round, followed by each of the other candidates in the subsequent rounds. I ranked Jared Golden last.

10. I completed my ballot in this manner to ensure that my vote was counted and to put additional candidates between my first choice, Bruce Poliquin, and my last choice, Jared Golden.

11. Bruce Poliquin was the only candidate I truly supported.

12. I did not wish to express support for the other candidates because they stood for principles that violated my political convictions.

13. However, I understood that if Bruce Poliquin was eliminated, my ballot would be discarded if I did not vote in additional rounds.



14. Accordingly, I voted for candidates other than Bruce Poliquin to ensure that my ballot was counted and to prevent Jared Golden from being elected.

15. Were it not for ranked-choice voting, I would not have supported candidates other than Bruce Poliquin.

16. I plan to vote in Maine's 2020 Senate election ("2020 Senatorial Election").

17. In the 2020 Senatorial Election, I once again want to ensure that my vote will be counted.

18. I therefore plan to rank Susan Collins first, followed by the independent candidates, followed last by Sara Gideon.

19. I do not support Sara Gideon or the independent candidates. However, I will rank them on my ballot to ensure that it is counted.

20. As a result, I will have to once again violate my political convictions in order to ensure that my vote is counted.

21. I declare under penalty of perjury that the foregoing is true and correct.

/s/ James T. Trudel  
James T. Trudel

July 21, 2020  
Date